

# **Exhibit I to the Development Agreement**

## **Utility Terms and Conditions**

Exhibit I  
Utility Terms and Conditions

1.0 **Preliminary Provisions.**

1.1 **Purpose.** Pursuant to the provisions of the Development Agreement, the purpose of this Exhibit I, Utility Terms and Conditions (“this Exhibit I”), is to set forth the requirements for the performance of all Utilities Work involving the utility infrastructure owned by or to be dedicated to the City, and to set forth all utility terms and conditions associated with the Development Agreement.

1.2 **Definitions.** Words, terms, and phrases used in this Exhibit I have the meanings ascribed to them by Section 1.3 of the Development Agreement, by this Section 1.2, or in other sections of this Exhibit I, unless the context clearly indicates that another meaning is intended.

1.2.1 **Abandon.** “*Abandon*,” specifically with respect to utilities, means to take out of service and physically disconnect utilities.

1.2.2 **Abandonment.** “*Abandonment*” means the act of abandoning utilities.

1.2.3 **City Utility.** “*City Utility*” means all City-owned mains, lines, fixtures, poles, facilities, and improvements that allow the provision of any City Utility Service.

1.2.4 **City Utility Service.** “*City Utility Service*” means the water, wastewater, stormwater, gas, or electric (streetlighting) utility services provided by the City.

1.2.5 **City Utility Standards.** “*City Utility Standards*” means those methods, means, practices materials, and systematic courses of action used by the Department of Public Utilities; and any written set of applicable provisions of the City Code, utilities laws, regulations, policies, guidelines, specifications, or standards, as duly adopted or amended.

1.2.6 **Department of Public Utilities.** “*Department of Public Utilities*” means the City’s Department of Public Utilities.

1.2.7 **Developer.** “*Developer*,” for the purposes of this Exhibit I only, means the Developer and its contractors, subcontractors, agents, sublessees, designees, successors, and assigns.

1.2.8 **Director.** “*Director*” means the Director of the Department of Public Utilities or the designee thereof.

1.2.9 **Facility.** “*Facility*” means any permanent, semi-permanent, or temporary constructed property, building, plant, structure, improvement, or fixture.

- 1.2.10 **Post-Development.** “*Post-development*” means the land use conditions, including, but not limited to, the impervious area, that reasonably may be expected or anticipated to exist on the Property after completion of the Project.
- 1.2.11 **Pre-Development.** “*Pre-development*” means the land use conditions, including, but not limited to, the impervious area, that exist on the Property at the execution of the Development Agreement.
- 1.2.12 **Project.** “*Project*” means all development activity, including, but not limited to any utility work performed by the Developer pursuant to the Development Agreement and its exhibits, including but not limited to, this Exhibit I.
- 1.2.13 **Project Area.** “*Project Area*” means the real property on which the Developer performs the Project and includes the Property and all rights-of-way and properties adjacent to the Property that are required for the development of the Project.
- 1.2.14 **Property.** “*Property*” means the real property leased pursuant to the Deeds of Ground Lease from the Authority to the Developer and sold pursuant to the Purchase and Sale Agreement by the City to the Developer or its designee.
- 1.2.15 **Stormwater Detention Facilities.** “*Stormwater Detention Facilities*” means the subsurface stormwater detention facilities, generally as depicted in the drawing entitled, “City of Richmond North of Broad Redevelopment Storm Sewer Analysis – Initial Development,” dated October 12, 2018, and marked as Attachment 1, attached hereto and incorporated herein.
- 1.2.16 **Streetlight.** “*Streetlight*” means any illumination facility that provides primary illumination adequate for highways, roadways, streets and alleys; and secondary benefit to light sidewalks within the public right of way.
- 1.2.17 **Utilities Work.** “*Utilities Work*” means all construction, relocation, removal, and Abandonment of City Utilities, and the restoration related to all such work, undertaken by the Developer, or, as applicable, by the Department of Public Utilities, within the Project Area.
- 1.2.18 **15-Year Storm.** “*15-year Storm*” means the 24-hour, 15-year frequency storm event.
- 1.2.19 **15-Year Storm Area.** “*15-year Storm Area*” means the portion of the Property bounded on the west by North 5th Street from East Marshall Street to East Leigh Street, on the north by East Leigh Street from North 5th Street to North 8th Street, then on the east by North 8th Street from East Leigh Street to East Clay Street, then on the south by East Clay Street from North 8th Street to North 7th Street, then on the east by North 7th Street from East Clay Street to East Marshall Street, and then on the south by East Marshall Street from North 7th Street to North 5th Street, excluding the property identified as Tax Parcel No. N000-0006/021; i.e., the Hospitality House.

1.2.20 **10-Year Storm.** “*10-year Storm*” means the 24-hour, ten-year frequency storm event.

1.2.21 **10-Year Storm Area.** “*10-year Storm Area*” means the remainder of the Property not within the 15-year Storm Area.

## 2.0 **General Terms and Conditions.**

2.1 **General City Utility Standards.** In addition to the specific City Utility Standards cited in this Exhibit I, the Developer shall comply with all other applicable City Utility Standards for all Utilities Work. The Developer shall make corrections, at the Developer’s expense, to any and all Utilities Work that is not performed in conformity with City Utility Standards. Nothing in this Exhibit I shall limit the City’s ability to enact or adopt, modify and enforce duly implemented laws, regulations, or policies.

2.2 **Master Utility Plan.** The term “Master Utility Plan,” as used herein, shall mean the plan dated November 13, 2018, revised July 16, 2019, entitled “Initial Master Utility Plan for the North of Broad/Navy Hill Area” as revised by any additional utility plan required by the Director, at his or her sole discretion, to address changes in development plans for the Project. Such additional utility plans are subject to the Director’s approval in writing, which approval shall be at the Director’s reasonable discretion. By way of example only, the Developer shall submit such additional utility plans to the Director to address changes in Project development plans to relocate a Facility, to change the number of units in a Facility, to modify the footprint area of a Facility, to change the type of use of a Facility (e.g., from retail to residential, or vice versa), or to change the street or bridge improvements. The Developer shall conduct all Utilities Work in accordance with the Development Agreement, including, but not limited to, this Exhibit I, and the Master Utility Plan. The Master Utility Plan is incorporated herein by this reference. To the extent that the Master Utility Plan conflicts with the provisions of this Exhibit I or with City Utility Standards, this Exhibit I and City Utility Standards shall control.

2.3 **Utility Relocation.** Pursuant to the terms in the Deeds of Ground Lease, the Purchase and Sale Agreement, and this Exhibit I, the Developer shall relocate, remove, or Abandon all existing City Utilities, as deemed reasonably necessary by the Director for reasons owing to the Project. In addition to any other remedy which may be available to the City under this Section 2.3, the City may withhold any City Utility Service from any Facility within the Project Area if the Director determines that the Utilities Work for such Facility has not been performed in accordance with this Exhibit I. In addition to written authorization from the Director, the Developer shall obtain written authorization from the City’s Fire Marshal before any fire line service is interrupted, disconnected, or abandoned. For the duration of the Project, the Developer shall maintain all applicable City Utility Service to all Facilities, unless specifically authorized in writing by the Director to disconnect or terminate any such City Utility Service.

2.4 **Costs of and Title to Utilities.** The Developer shall pay the actual costs of City Utility construction and relocation deemed necessary by the Director due to the Project, which costs include, but are not limited to, design, original and supporting construction, City

inspections, and testing. Upon completion of the Utilities Work, the Developer shall provide to the City a statement of the cost of construction of all utility facilities and transfer to the City title to all utility facilities, as required by City Utility Standards.

2.5 **Utility Easements.** The Developer or the Authority, as applicable, shall agree to grant to the City or to allow the City to reserve all necessary easements for all existing and relocated City Utilities, as required by City Utility Standards.

2.6 **As-built Drawings.** In addition to the Master Utility Plan described in Section 2.2, the Developer shall provide to the City as-built drawings, stamped by a person licensed as a professional engineer in the Commonwealth of Virginia, of all relocated, new, and abandoned City Utilities. The Developer shall prepare all as-built drawings pursuant to this Section 2.6 in accordance with applicable City Utility Standards. By way of example only, the Developer shall provide to the City digitized files, in a format acceptable to the Director, for all utility improvements. The Developer shall provide to the City accurate Global Positioning System coordinates for the final locations of all utility improvements. Global Positioning System coordinates on certain off-site fixtures can be used to properly position the development in the City's Geographical Information System. If Global Positioning System coordinates are not provided to the City or are not available, the Developer shall provide to the City site as-built surveys that include a minimum of six control points that will provide accurate references to properly position the Geographical Information System update within the applicable Virginia State Plane guidelines.

2.7 **Other Terms and Conditions.** In addition to the terms and conditions detailed in this Exhibit I, the Director may, upon further analyses and reviews, deem other terms and conditions necessary including, but not limited to, water demand projections, fire flow capacity testing, and water modeling. Such terms and conditions must be consistent with utility industry standards and must be consistent with the types of terms and conditions customarily required by the Director for similar projects. The Director shall communicate such other terms and conditions to the Developer within 30 calendar days from the Director's receipt of such analyses and reviews. The Developer then shall revise the Master Utility Plan to address such terms and conditions subject to the Director's review and written approval as detailed in Section 2.2. The Director's required terms and conditions may include, without limitation, additional performance bond and insurance requirements.

3.0 **Water and Sewer Terms and Conditions.**

3.1 **Water and Sewer Main Relocations and Extensions.** The Developer shall perform, or pay for, all Utilities Work associated with water and sewer main relocations and extensions in conformity with the Master Utility Plan, and with City Utility Standards, with such conformity to be verified by a City inspector. The Developer shall perform all tie-ins to existing City sewer mains after providing the City at least three days' notice to arrange for City inspection and certification at the time of sewer tie-in performance. All tie-ins to water mains shall be undertaken by the City or its contractors at the Developer's expense. The City shall schedule water tie-ins requested by the Developer, with the Developer, once the City has received payment. Such scheduled dates shall be at least 15 calendar days, but no

longer than 45 calendar days, after the City has received payment for the tie-in from the Developer. The City may, however, schedule water tie-ins longer than 45 calendar days after the City has received payment for the tie-in from the Developer for good cause, at the Director's reasonable discretion. The Developer and the Director shall execute a contract, in a form substantially similar to the attached Contract to Extend Water Main(s) or the attached Contract to Extend Sewer Main(s), collectively marked as Attachment 2 and attached hereto, before any water or sewer main affected by the Project is extended within the Project Area.

#### 4.0 **Stormwater Management Terms and Conditions.**

4.1 **Stormwater Management Purpose.** The Authority, the City, and the Developer acknowledge that stormwater management and green infrastructure are practices which are environmentally responsible and commercially appealing. The terms and conditions in this Exhibit I limit neither the ability of the Developer or the Authority to install additional stormwater management controls, nor the ability of the City to adopt, modify or enforce duly enacted stormwater management laws, regulations, or policies.

#### 4.2 **Peak Flow Rate Controls.**

4.2.1 **15-year Storm Peak Flow Rate Control.** The Developer shall maintain detention of the peak discharge from the 15-year Storm for the 15-year Storm Area. More specifically, the Developer shall maintain detention of the post-development peak discharge rate for the 15-year Storm for the 15-year Storm Area at a level that is equal to or less than the pre-development peak discharge rate for the 15-year Storm for the 15-year Storm Area, as calculated on Attachment 1.

4.2.2 **10-year Storm Peak Flow Rate Control.** The Developer shall maintain detention of the peak discharge from the 10-year Storm for the 10-year Storm Area. More specifically, the Developer shall maintain detention of the post-development peak discharge rate for the 10-year Storm in the 10-year Storm Area at a level that is equal to or less than the pre-development peak discharge rate for the 10-year Storm in the 10-year Storm Area.

4.2.3 **Sanitary Sewer Peak Flow Rate Control.** In addition to accounting for the 15-year Storm and the 10-year Storm as detailed in Sections 4.2.1 and 4.2.2, the Developer shall reduce peak stormwater flows by the amount of the projected sanitary sewer flows that will be generated on the Property by the Project calculated pursuant to Sections 2.2.3.B and 2.2.4.C of the City of Richmond, Department of Public Utilities, Sanitary Sewer System Design Guidelines, Standards Specifications and Details, revised: December 1, 2010. The Developer shall provide to the City the sanitary sewer flow projections, and any updates as required by Section 2.2, along with plans to detain the volume of stormwater equal to such projected sanitary sewer flows. The Director shall have discretion to review, and to approve or reject, the sanitary sewer flow projections and corollary stormwater detention plans provided by the Developer, and to demand any necessary updates thereto, before any corresponding sewer tie-in is performed pursuant to Section 3.1.

#### 4.3 **Stormwater Management Facilities.**

4.3.1 **Stormwater Detention Facilities.** In support of stormwater management and the Developer's obligations under Sections 4.2.1 and 4.2.2, the Developer, at Developer's expense, shall install and maintain Stormwater Detention Facilities. Prior to installation, the Developer shall provide the Director with 100% design drawings for the construction of the Stormwater Detention Facilities, which design drawings are subject to the Director's approval.

4.3.2 **Stormwater Utility Maintenance Agreement.** The Developer shall execute one Stormwater Utility Maintenance Agreement, substantially similar to the form attached hereto and marked as Attachment 3, for the Stormwater Detention Facilities.

4.3.3 **Stormwater Detention Facilities Security.** The Developer shall furnish the City with a performance bond for the Developer's Stormwater Detention Facilities maintenance obligations under this Section 4.3, which must be approved as to form by the City Attorney and approved as to content by the Director, in an amount approved by the Director upon the Director's review and approval of the Stormwater Detention Facilities 100% design drawings for construction.

#### 5.0 **Gas Terms and Conditions.**

5.1 **Gas Service.** Consistent with the Master Utility Plan, the Developer shall ensure that, within the Project Area, (i) all Facilities, and each unit thereof, are equipped with natural gas fixtures and appliances for primary space heating and hot water, (ii) all commercial Facilities, and each unit thereof, additionally are equipped with natural gas commercial dryers and natural gas commercial cooking appliances, to the extent commercial dryers or commercial cooking appliances are installed in such commercial Facilities; and (iii) all fireplaces are natural gas fireplaces. Further, the Developer shall ensure that all natural gas fixtures and appliances required by this section utilize natural gas provided by the City natural gas utility.

5.2 **City Gas Lines.** The Developer shall not relocate, Abandon, disconnect, or otherwise disturb any City gas line.

#### 6.0 **Streetlights and Electricity Terms and Conditions.**

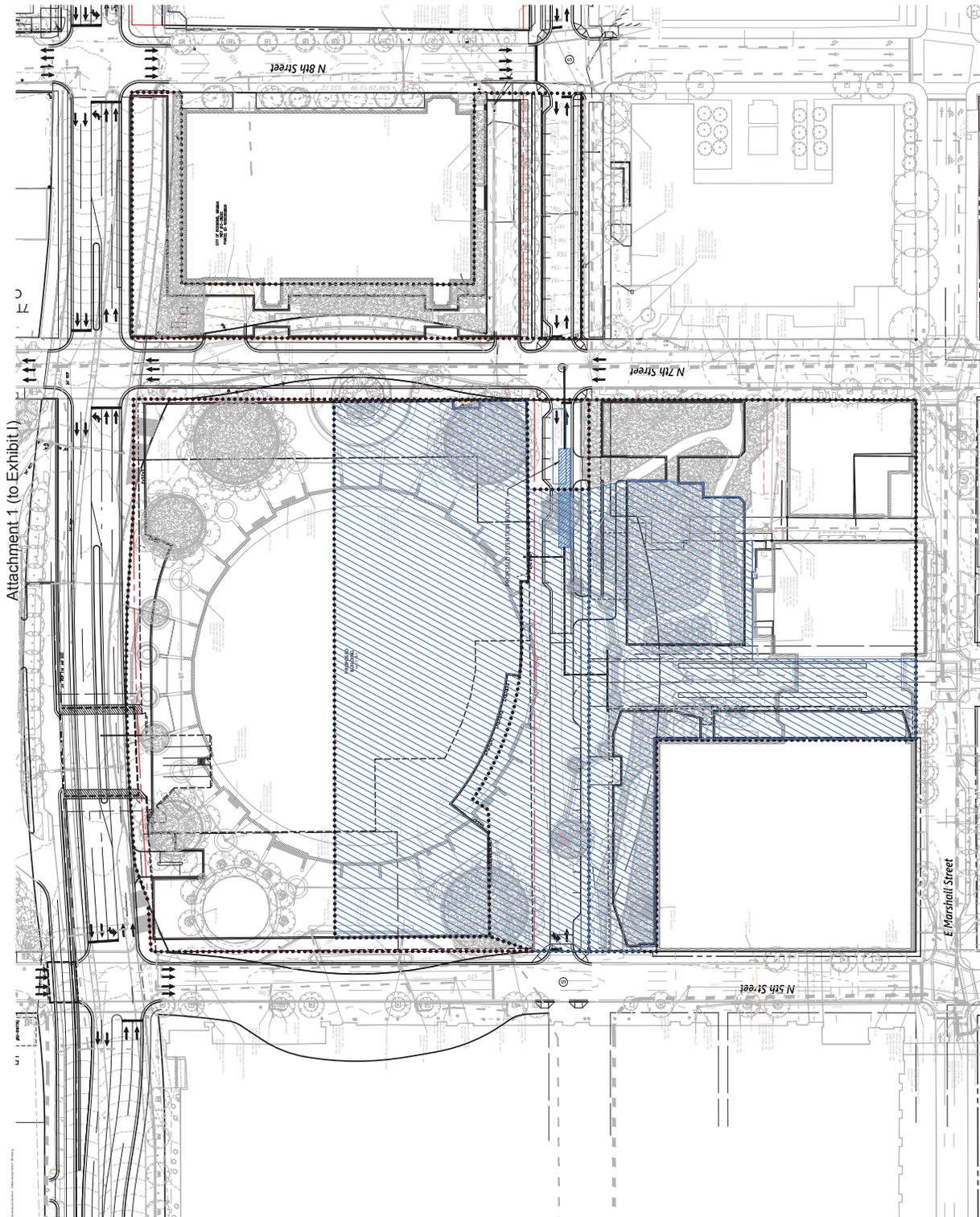
6.1 **Streetlight Construction.** The Developer shall ensure that all Streetlights and associated materials are constructed or remodeled consistent with the Master Utility Plan, and that all proposed plans that include Streetlights are reviewed and approved by the Director in writing prior to implementation.

6.1.1 **Lighting Standards.** The Developer shall ensure that all Streetlights within the Project Area meet City Utility Standards for foot candle, lighting source, color rendering, and color temperature. The Developer shall ensure that all Streetlights within the Project Area employ light-emitting diode (LED) fixtures. Prior to installation of Streetlight-related

fixtures within the Project Area, the Developer shall obtain the Director's written approval for all such fixtures including, but not limited to, Streetlight poles, pole bases, construction methods, and installation methods.

- 6.1.2 **Poles and Conduits.** The Developer shall ensure that all poles and conduits are installed in accordance with City Utility Standards, as directed by the City electric utility inspector.
- 6.1.3 **Electric Conductors.** The Developer shall be responsible either for "pulling" the electric conductors, or for paying the City its standard rates to pull the electric conductors. The Director shall be responsible for making the terminations and connections to the City electric utility power distribution grid in accordance with City Utility Standards.
- 6.2 **Inspections.** All Streetlight Work performed pursuant to the Development Agreement shall be subject to (a) the Director's inspections on a minimum 48 hours' notice to the Director and (b) any other applicable City Utility Standards.

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**Drainage Area Calculations**  
Block A, E, F, B

Project: North of Broad  
Job#: 2447.02  
Date: October 22, 2018  
By: RSC

Pre-Development Drainage Areas			
Drainage Area	Soil	Ultimate Impervious (SF)	Total Area (SF)
7th Street	CSO	462,700	462,700
<b>Total</b>		<b>462,700</b>	<b>462,700</b>

Area Development Drainage Areas			
Drainage Area	Soil	Ultimate Impervious (SF)	Total Area (SF)
7th Street	CSO	252,700	252,700
7th Detain	CSO	226,700	226,700
<b>Total</b>		<b>479,400</b>	<b>479,400</b>

Area Development Change Areas			
Drainage Area	Soil	Ultimate Impervious (SF)	Total Area (SF)
7th Street	CSO	252,700	252,700
7th Detain	CSO	226,700	226,700
<b>Total</b>		<b>479,400</b>	<b>479,400</b>

\* Landscaping areas are subject to change

- Legend**
- THE DEVELOPMENT PREVIOUS AREA "MANNING TURF"
  - PROPOSED UNDERGROUND DETENTION
  - UNDERGROUND DETENTION CAPTURE AREA
  - APPROX. PROPOSED DRAINAGE DIVIDE
  - PROPOSED PROPERTY LINE
  - DRAINAGE AREA
  - TOTAL AREA, ACRES
  - RUNOFF COEFFICIENT, C-FACTOR

- Notes**
- THE AREA OF ANALYSIS INCLUDES THE FOUR WESTERN MOST BLOCKS OF THE REDEVELOPING BLOCKS A, E, F, AND B.
  - THE DESIGN IS BASED ON CITY OF RICHMOND REQUIREMENTS FOR THE POST DEVELOPMENT PARAMETER PALETTE FOR THE STORM DESIGN TO MEET EMERGENCY BALANCE OR PROVIDE WATER QUALITY.
  - IT IS ASSUMED THAT THE POST DEVELOPMENT LAND COVER WILL BE BASED ON PRELIMINARY NUMBERS. AN UNDERGROUND DETENTION SYSTEM WILL BE REQUIRED TO STABILIZE STORMWATER RUNOFF BEFORE WITHIN THE UNDERGROUND DETENTION CAPTURE AREA IS DISCHARGED DIRECTLY INTO THE STREET.

**City of Richmond  
North of Broad Redevelopment  
Storm Sewer Analysis - Initial Development**



**CONTRACT TO EXTEND WATER MAIN(S)**

This Contract to Extend Water Main(s) (this “Agreement”), is made this \_\_\_\_day of \_\_\_\_\_, 20\_\_ by and between the CITY OF RICHMOND, a municipal corporation of the Commonwealth of Virginia (the “the City”) and THE NH DISTRICT CORPORATION (the “Owner”) (collectively, the “parties”).

WHEREAS, the parties entered into a Navy Hill Development Agreement (the “Development Agreement”), dated \_\_\_\_\_, 2019, including Exhibit F attached thereto (the “Utility Terms and Conditions”), which set forth, inter alia, that the parties agree to enter this Agreement before the Owner extends any water main within the “Project Area” as defined under the Utility Terms and Conditions; and

[WHEREAS, Owner is seized in fee simple of a parcel(s) of real property (the “Property”), listed in the City of Richmond tax assessor records with Tax Parcel No(s) \_\_\_\_\_ and described as follows \_\_\_\_\_; and

**OR**

WHEREAS, pursuant to the Development Agreement, Owner has certain development rights and obligations on a parcel(s) of real property (the “Property), listed in the City of Richmond tax assessor records with Tax Parcel No(s), \_\_\_\_\_ and described as follows: \_\_\_\_\_; and]

WHEREAS, Owner wishes to build or has built the following on the Property: \_\_\_\_\_; and

WHEREAS, Owner wishes to provide for the adequate provision of water service for the Property; and

WHEREAS, Owner is willing to construct and install a water main(s) and appurtenant facilities, at Owner’s expense, in order to provide for this service; and

WHEREAS, the City is willing to inspect, accept, operate and maintain certain parts of the water main(s) and appurtenant facilities as described below and subject to the conditions as provided below;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual benefits resulting from the undertakings of the parties hereto set forth in this Agreement, and pursuant to the Development Agreement and applicable provisions thereof, the City and Owner covenant and agree each with the other as follows:

1. That for the purposes of this Agreement, the following defined terms shall, unless clearly indicated otherwise, have the meanings specified below:

*Department of Public Utilities (DPU)* means the City's Department of Public Utilities.

*Director* means the Director of the Department of Public Utilities or the designee thereof.

*Water Main* means a City-owned pipe installed in a public right-of-way extending parallel or nearly parallel to the line of property abutting thereon, or within a public utility easement held by the City, through which public drinking water is conveyed or distributed.

*Water Service Line* means a pipe, which is on private property, and outside of any public utility easement held by the City, that is used to supply public drinking water to any premises.

*Water Distribution System* means the water mains, water service lines, water service connections, water meters, and other appurtenant facilities that are necessary to serve the following property or properties:

\_\_\_\_\_.

2. That Owner will, at Owner's expense, furnish all material and install the water distribution system, or pay DPU for the costs of such materials and installations. The water distribution system will distribute water from a point of connection with an existing City-owned water main to the Property.
3. That Owner will, in addition to materials and installation expense, be responsible for costs and fees associated with professional services provided, including engineering and legal fees relating to the provision of plans and deed documents.
4. That Owner will pay the appropriate City Department any applicable connection fee and/or permit application fee prior to commencing any construction. After construction and prior to connection of the facilities, the Owner shall furnish to DPU, in a form acceptable to DPU, a statement of the cost of construction of the facilities and a set of as-built drawings prepared by a licensed engineer.
5. That after construction is complete, and subject to inspection and written acceptance by DPU, DPU will connect the water distribution system to an existing City-owned water main. Upon connection, the City will own all mains and appurtenant facilities from the connection with the existing main to the outlet side of the water meter serving each building or home on the Property. Owner will retain ownership of all service lines from the outlet side of the water meter and continuing into each building or home on the Property.

6. That, as owner of the water mains and appurtenant facilities in the right-of-way or public utility easements held by the City, the City will be responsible for maintaining and operating said mains and facilities. The City shall, as owner, have the right, at its sole discretion and without payment to Owner, to connect other properties to the portion of the water distribution system that it owns. In addition, the City will have the right to provide water service to and collect water service fees from any customer at such property pursuant to City Code.
7. That as owner of the water service lines, Owner will be responsible for maintaining and operating said water service lines.
8. That the materials used and the work done shall be in compliance with DPU Standard Specifications (based on the version in place as of the date of execution of this Agreement). Prior to commencing any work, Owner must provide to DPU plans and specifications (“Water Plans”) prepared by a licensed engineer for the water distribution system. DPU will review these Water Plans, at Owner’s expense, and upon satisfaction with said Water Plans, will approve them in writing. Approved Water Plans will become a part of this Agreement, and are incorporated by reference herein. No changes shall be made to approved Water Plans without the prior written consent of DPU. Any subsequent approved changes to approved Water Plans will also be incorporated into this Agreement by reference. Owner will not commence work until Owner is in receipt of Approved Water Plans and all permits necessary to commence construction of the water distribution system.
9. That, DPU will inspect the work and will test the water distribution system. After DPU approves the water distribution system, DPU will connect the new approved water distribution system to an existing City-owned water main, at Owner’s expense. Owner will notify DPU when Owner begins construction. DPU, or any other City department, will be permitted to inspect the facilities at any time during construction. If construction work is covered up before inspection is made, the City may require the construction work to be uncovered at Owner’s expense for inspection. Until acceptance, Owner will be responsible for lawfully providing water service on the Property. The Owner is responsible for all construction stake out, including main centerline, fire hydrant locations and water meter boxes. All main line cut-sheets shall include excavations from existing grade, proposed grade and pipe flow lines. Fire hydrant and meter box locations shall include finish grade. The Owner is responsible for water meter setters and boxes until the meter is set and area is graded. Any adjustments to the meter are at the expense of the Owner prior to the installation of the water meter. All final restoration work shall be provided by the Owner in accordance with applicable City restoration requirements.
10. That Owner agrees that the City’s inspectors shall have the right to halt any construction that does not conform to this Agreement and to require the Owner to make the corrections necessary to comply with this Agreement.

11. That if public sanitary sewer is not currently available to the Property, Owner will simultaneously herewith execute with the City, a Contract to Extend Sanitary Sewer Main(s) to construct and install, at Owner's expense, a sewer collection system to serve the Property.
12. That Owner agrees that if construction of the water distribution system is not substantially (more than 75% of work completed) within one year of the approval date of the Water Plans, DPU will review the approved Water Plans to ensure revisions are not necessary. If DPU determines that the approved Water Plans require revision, Owner will work with DPU to make necessary revisions. DPU may, at its discretion, halt construction of the water distribution system pending revision of the Water Plans.
13. That any building(s) or structure(s) to be served by the water distribution system shall conform in all respects to the provisions of the zoning ordinance, building, fire prevention, plumbing and electrical codes, and all other laws and ordinances relating to the use of the property, building construction, and safety of the public and building occupants.
14. That Owner shall not install any water pipe on Owner's private property, which, upon review of the Water Plans described in Section 8 of this Agreement, the Director, at the Director's sole discretion, determines to be a water main, unless the Owner obtains the prior written consent of the Director and grants the City an easement to access, operate and maintain said main. The Owner shall further grant the City any easement necessary, as determined by the Director, to access, operate and maintain water meters and other appurtenant facilities that are part of the water distribution system. Such easements will be recordable, and will be in a form acceptable to the City Attorney. Such easements must include general warranty of title, based upon an affirmation by the Owner that he/she is capable of conferring clean title. Any costs associated with providing the easement will be paid by Owner.
15. That Owner will not assign this Agreement or any of the rights, benefits, privileges, duties or obligations ensured, received, imposed or assumed under this Agreement without the prior written approval of the City.
16. That the Owner will hold harmless, defend and indemnify the City from and against all liability, losses, damages, claims, actions, causes of action, costs and expenses (including attorney's fees) including those for personal injury (including death) and any property or environmental damage whatsoever occurring, arising from or growing out of directly or indirectly from work performed under the terms of this Agreement. That the Owner will also indemnify and hold the City harmless from any liability for the Owner's failure to pay for labor or material in the construction of the water system. This term will survive the expiration of this Agreement.
17. That the terms of this Agreement and any future service provided by DPU to Owner are governed by and will be provided in conformance with all applicable laws, including, but not limited to, the Code of the City of Richmond and the Virginia Code.

18. That this Agreement shall run with the land and be binding upon the parties and their successors and assigns.
19. That failure of Owner to comply with any term of this Agreement will be grounds for the City to terminate this Agreement.
20. That nothing herein shall prevent the City from taking any action permitted by law against the Owner or its contractors for any negligent or willful failure to carry out the requirements of this Agreement. This Agreement shall be governed, construed, and enforced by and in accordance with the laws of the Commonwealth of Virginia. Any suit or controversy arising under this Agreement shall be litigated in the General District or Circuit Court of the City. Owner waives any objection to venue.
21. That the execution of this Agreement or the performance of any act or acts pursuant to the provisions hereto shall not be deemed to have the effect of creating between the City and Owner any relationship of principal and agent, partnership, or relationship other than that of City and Owner.
22. That this Agreement will be effective on the date of execution by the City.
23. That the Director, unless the context clearly indicates otherwise, shall have the power and authority to execute this Agreement and to carry out its terms.

[Signature Page to Follow]

IN WITNESS WHEREOF, the City has caused its name to be subscribed hereto by its Director of Public Utilities, and the Owner has affixed his signature.

**CITY OF RICHMOND**

By: \_\_\_\_\_  
Director of Public Utilities

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

**OWNER**

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

Title: \_\_\_\_\_

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

CITY OF RICHMOND  
STATE OF VIRGINIA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ on behalf of \_\_\_\_\_.

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

My commission expires: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Assistant City Attorney

**CONTRACT TO EXTEND SANITARY SEWER MAIN(S)**

This Contract to Extend Sanitary Sewer Main(s) (this "Agreement"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the CITY OF RICHMOND, a municipal corporation of the Commonwealth of Virginia (the "City") and THE NH DISTRICT CORPORATION (the "Owner") (collectively, the "parties").

WHEREAS, the parties entered into a Navy Hill Development Agreement (the "Development Agreement"), dated \_\_\_\_\_, 2019, including Exhibit F attached thereto (the "Utility Terms and Conditions"), which set forth, *inter alia*, that the parties agree to enter this Agreement before the Owner extends any sewer main within the "Project Area" as defined under the Utility Terms and Conditions; and

[WHEREAS, Owner is seized in fee simple of a parcel(s) of real property (the "Property"), listed in the City of Richmond tax assessor records with Tax Parcel No(s) \_\_\_\_\_ and described as follows: \_\_\_\_\_; and

**OR**

WHEREAS, pursuant to the Development Agreement, Owner has certain development rights and obligations on a parcel(s) of real property (the "Property"), listed in the City of Richmond tax assessor records with Tax Parcel No(s): \_\_\_\_\_ and described as follows: \_\_\_\_\_; and]

WHEREAS, Owner wishes to build or has built the following on the Property: \_\_\_\_\_; and

WHEREAS, Owner wishes to provide for the adequate removal of sanitary sewage from the Property; and

WHEREAS, Owner is willing to construct and install a sanitary sewer main(s) and appurtenant facilities, at Owner's expense, in order to provide for this removal; and

WHEREAS, the City is willing to inspect, accept, operate and maintain certain parts of the sanitary sewer main(s) and appurtenant facilities as described below and subject to the conditions as provided below;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual benefits resulting from the undertakings of the parties hereto set forth in this Agreement, and pursuant to the Development Agreement and applicable provisions thereof, the City and Owner covenant and agree each with the other as follows:

1. That for the purposes of this Agreement, each of the following defined terms shall, unless clearly indicated otherwise, have the meaning specified below:

*Department of Public Utilities (DPU)* means the City's Department of Public Utilities.

*Director* means the Director of the Department of Public Utilities or the designee thereof.

*Sanitary Sewer Main* means a City-owned pipe installed in a public right-of-way extending parallel or nearly parallel to the line of property abutting thereon, or within a public utility easement held by the City, through which waste, refuse, liquids or other materials are conveyed.

*Sanitary Sewer Lateral* means a pipe, which is installed partially on private property and outside any public utility easement held by the City, that is used to convey waste, refuse, liquids, and other materials from a building to a Sanitary Sewer Main, and includes the fixture that connects the pipe to the Sanitary Sewer Main.

*Sewer System* means the sanitary sewer mains, sanitary sewer laterals and other appurtenant facilities that are necessary to serve the following property or properties:\_\_\_\_\_.

2. That Owner will, at Owner's expense, furnish all materials and install the sewer system. The sewer system will collect sewage on the Property for transmission to a point of discharge to an existing City-owned sanitary sewer main.
3. That Owner will, in addition to materials and installation expense, be responsible for costs and fees associated with professional services provided, including engineering and legal fees relating to the provision of plans and deed documents.
4. That Owner will pay the appropriate City Department any applicable connection fee and/or permit application fee prior to commencing any construction. After construction and prior to connection of the facilities, the Owner shall furnish to DPU, in a form acceptable to DPU, a statement of the cost of construction of the facilities and a set of as-built drawings prepared by a licensed engineer.
5. That after construction is complete, and subject to inspection and written acceptance by DPU, Owner will connect the sewer system to an existing City-owned sanitary sewer main. Upon connection, the City will own all sanitary sewer mains. The City will also own all other parts of the newly installed sewer system if those parts are installed in a public right-of-way or public utility easement held by the City. Owner will retain ownership of all sanitary sewer laterals not in a public right-of-way or public utility easement held by the City.
6. That, as owner of the sanitary sewer mains and appurtenant facilities in the right-of-way or

public utility easement held by the City, the City will be responsible for maintaining and operating said mains and facilities. The City shall, as owner, have the right, at its sole discretion and without payment to Owner, to connect other properties to the City's sewer system. In addition, the City will have the right to provide wastewater service to and collect wastewater service fees from any customer at such property pursuant to City Code.

7. That, as owner of the sanitary sewer laterals and facilities on private property, Owner will be responsible for maintaining and operating said laterals and facilities.
8. That the materials used to construct the sewer system and the work done shall be in compliance with DPU Standard Specifications (based on the version in place as of the date of execution of this Agreement). Prior to commencing any work, Owner must provide to DPU plans and specifications for the sewer system prepared by a licensed engineer. DPU will review these plans ("Sewer Plans"), at Owner's expense, and upon satisfaction with said Sewer Plans, will approve them in writing. Approved Sewer Plans will become a part of this Agreement, and are incorporated by reference herein. No changes shall be made to approved Sewer Plans without the prior written consent of DPU. Any subsequent approved changes to approved Sewer Plans will also be incorporated into this Agreement by reference. Owner will not commence work until Owner is in receipt of approved Sewer Plans and all permits necessary to commence construction of the sewer system.
9. That Owner agrees that if construction of the sewer system is not substantially (more than 75%) completed within one year of the approval date of the Sewer Plans, DPU will review the approved Sewer Plans to ensure revisions are not necessary. If DPU determines that the approved Sewer Plans require revision, Owner will work with DPU to make necessary revisions. DPU may, at its discretion, halt construction of the sewer system pending revision of the Sewer Plans.
10. That DPU will inspect the work. After DPU approves the sewer system, Owner, at Owner's expense, will connect the approved sewer system to an existing City-owned sewer main. Owner will notify DPU when Owner begins construction. DPU, or any other City department, will be permitted to inspect the facilities at any time during construction. If the construction work is covered up before inspection is made, the City may require the construction work to be uncovered at Owner's expense for inspection. Owner will be responsible for performing all restoration work to the construction at the Owner's expense. Until acceptance, Owner will be responsible for lawfully disposing of sewage originating on the Property.
11. That Owner agrees that the City's inspectors shall have the right to halt any construction that does not conform to this Agreement and to require the Owner to make the corrections necessary to comply with this Agreement.
12. That Owner will make a television (CCTV) inspection of the sewer lines before the City accepts its portion of the system. The Owner will provide two (2) copies of the CCTV inspection to DPU, in a format acceptable to the Director, immediately upon completion of the CCTV inspection. The Owner, at the Owner's expense, agrees to repair any deficiencies

in the sewer system found by the CCTV inspection. The Owner understands and agrees that DPU will not allow connection to the City's sewer system or accept its portion of the system until any problems found by CCTV are resolved.

13. That any building(s) or structure(s) to be served by the sewer system shall conform in all respects to the provisions of the zoning ordinance, building, fire prevention, plumbing and electrical codes, and all other laws and ordinances relating to the use of the property, building construction, and safety of the public and building occupants.
14. That Owner shall not install any sanitary sewer pipe on Owner's private property, which, upon review of the Sewer Plans described in Section 8 of this Agreement, the Director, at the Director's sole discretion, determines to be a sanitary sewer main, unless the Owner obtains the prior written consent of the Director and grants the City an easement to access, operate and maintain said main. The easement will be recordable, and will be in a form acceptable to the City Attorney. Such easements must include general warranty of title, based upon an affirmation by the Owner that he/she is capable of conferring clean title. Any costs associated with providing the easement will be paid by Owner.
15. That if public water is not currently available to the Property, Owner will simultaneously herewith execute with the City a Contract to Extend Water Main(s) to construct and install, at the Owner's expense, a water distribution system to serve the Property.
16. That Owner will not assign this contract or any of the rights, benefits, privileges, duties or obligations ensured, received, imposed or assumed under this contract without the prior written approval of the City.
17. That Owner will hold harmless, defend and indemnify the City from and against all liability, losses, damages, claims, actions, causes of action, costs and expenses (including attorney's fees) including those for personal injury (including death) and any property or environmental damage whatsoever occurring, arising from or growing out of directly or indirectly from work performed by the Owner or its agents or assigns under the terms of this Agreement. That the Owner will also indemnify and hold City harmless from any liability for the Owner's failure to pay for labor or material in the construction of the sewer system. This term will survive the expiration of this Agreement.
18. That the terms of this Agreement and any future service provided to Owner by DPU are governed by and will be provided in conformance with all applicable laws, including, but not limited to, the Code of the City of Richmond and the Virginia Code.
19. That this Agreement shall run with the land and be binding upon the parties and their successors and assigns.
20. That failure of Owner to comply with any term of this Agreement will be grounds for the City to terminate this Agreement.
21. That nothing herein shall prevent the City from taking any action permitted by law against

the Owner or its contractors for any negligent or willful failure to carry out the requirements of this Agreement. This Agreement shall be governed, construed, and enforced by and in accordance with the laws of the Commonwealth of Virginia. Any suit or controversy arising under this Agreement shall be litigated in the General District or Circuit Court of the City. Owner waives any objection to venue.

22. That the execution of this Agreement or the performance of any act or acts pursuant to the provisions hereto shall not be deemed to have the effect of creating between the City and Owner any relationship of principal and agent, partnership, or relationship other than that of City and Owner.
23. That this Agreement will be effective on the date of execution by the City.
24. That the Director, unless the context clearly indicates otherwise, shall have the full power and authority to execute this Agreement and to carry out its terms.

[Signature Page to Follow]

IN WITNESS WHEREOF, the City has caused its name to be subscribed hereto by its Director of Public Utilities, and the Owner has affixed his signature.

**CITY OF RICHMOND**

By: \_\_\_\_\_  
Director of Public Utilities

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

**OWNER**

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

Title: \_\_\_\_\_

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

STATE OF VIRGINIA  
CITY OF RICHMOND

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, on behalf of \_\_\_\_\_.

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

My commission expires: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Assistant City Attorney



**AFTER**  
**RECORDING RETURN TO:**  
City of Richmond, Department of Public Utilities  
Water Resources Division  
730 E. Broad Street, 8<sup>th</sup> Floor  
Richmond, Virginia 23219

**CITY OF RICHMOND, VIRGINIA**  
**TAX MAP NOS: N000-0006/004 and N000-0006/025**

**STORMWATER UTILITY MAINTENANCE AGREEMENT**

THIS STORMWATER UTILITY MAINTENANCE AGREEMENT (this "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, (the "Owner") and the CITY OF RICHMOND, a municipal corporation organized under the laws of the Commonwealth of Virginia (the "City") (collectively, the "parties").

**RECITALS**

WHEREAS, the parties entered into a Navy Hill Development Agreement (the "Development Agreement"), dated \_\_\_\_\_, 2019, including Exhibit F attached thereto (the "Utility Terms and Conditions"), which set forth, *inter alia*, that the parties agree to enter this Agreement; and

WHEREAS, the Owner holds fee simple title to certain real property situated in the City of Richmond, Virginia, designated as Tax Parcel Nos. N000-0006/004 and N000-0006/025 and being a portion of the same real estate conveyed to the Owner by deed recorded in the Clerk's office of the Circuit Court of the City of Richmond, Virginia, as Instrument Nos. \_\_\_\_\_ and \_\_\_\_\_, (the "Property"); and

WHEREAS, the Owner has submitted to the City, and the City has approved, a plat showing the location of, and the City's route of access to, stormwater management facilities and associated appurtenances (the "Facilities") on or adjoining the Property, which is intended to manage the quality and quantity of stormwater runoff from the Property and other surrounding properties, which plat is entitled \_\_\_\_\_, prepared by \_\_\_\_\_, dated \_\_\_\_\_ and marked as "Addendum A," attached hereto and incorporated herein; and

WHEREAS, the Facilities are described as follows:  
\_\_\_\_\_ ; and

WHEREAS, pursuant to the Development Agreement and in accordance with Sections 14-331 and 14-332 of the 2015 Richmond City Code (the "Code"), the Owner must sign and record in the local land records an instrument to run with the land that, i) obligates the Owner and any future owner of the Facilities to inspect and maintain the Facilities for their full lifespan, and ii) provides the City with a route of access to the Facilities through the Property for purposes of

inspection and, when the City deems it necessary and convenient, maintenance of the Facilities;  
and

WHEREAS, the City and the Owner intend for this Agreement to serve as the instrument described in the previous paragraph.

## **AGREEMENT**

**NOW, THEREFORE**, pursuant to the Development Agreement, the parties agree as follows:

1. **Recitals.** The foregoing Recitals are true and correct and are incorporated herein by reference.
2. **Inspection and Maintenance of Facilities by the Owner.** The Owner agrees to regularly maintain and inspect the Facilities to ensure the Facilities function at design capacity (“Good Working Order”) throughout their expected lifespan, as determined by the City’s Department of Public Utilities (the “Department”). The Owner shall inspect the Facilities at least once every three (3) years, and the Owner’s maintenance of the Facilities must, at minimum, be in accordance with any applicable guidance provided in the latest edition of the “Virginia Stormwater Management Handbook” and at the Virginia Stormwater BMP Clearinghouse website.
3. **Submission of Inspection and Maintenance Reports.** The Owner agrees to submit an inspection and maintenance report to the Department, on a form to be provided by the City, within thirty (30) days following any inspection or maintenance of the Facilities by the Owner.
4. **Inspection and Maintenance of Facilities by the City.** Pursuant to Section 14-332 of the Code, the City has the right to access the Property from time to time to inspect the Facilities to ensure they are in Good Working Order. In the event the Facilities are not in Good Working Order, the City will provide the Owner with written notice of corrective action needed to restore Good Working Order (“Corrective Action Notice”). Upon failure by the Owner to take such corrective action within thirty (30) days following receipt of a Corrective Action Notice, the City may take whatever steps it deems necessary to restore the Facilities to Good Working Order. The Owner expressly understands and agrees the City is under no obligation to maintain or repair the Facilities, and in no event will this Agreement be construed to impose any such obligation on the City.
5. **Response to Facilities Emergency.** In the event of an emergency involving the Facilities, as determined by the Department in its sole discretion, the City will have the right, but not an obligation, to take whatever steps it deems necessary to abate the emergency condition. Before, or in place of, exercising such right, the City may instruct the Owner by telephone or email to abate the emergency condition within a specified period of time.
6. **Reimbursement of the City’s Expenditures; No Cost to the City.** In the event the City performs work or expends any funds to maintain or repair the Facilities or to respond to an emergency related thereto, including, but not limited to, performance of labor and purchase of equipment, supplies and materials, the Owner agrees to reimburse the City in

full within sixty (60) days after the City provides written notice to the Owner of all compensation due. In no event will the City pay any compensation to the Owner relating to the City's exercise of its rights set forth in this Agreement.

**7. Indemnification.**

- a. The Owner hereby agrees to indemnify, defend and hold the City harmless from and against any and all actual, threatened, or alleged claims, liabilities, penalties, fines, costs, losses, damages, causes of action, judgments, and administrative actions, including without limitation attorney's fees and court costs, resulting either directly or indirectly from the acts or omissions of the City and its officers, employees, agents and contractors in the performance of activities on the Property permitted by this Agreement.
- b. The City, in its performance of activities on the Property permitted by this Agreement, shall not be liable for any personal injury or property damage to the Owner, its employees, contractors, agents, invitees or licensees, irrespective of how such injury or damage may be caused.
- c. No causes of action of, or defenses of, or claims of the Owner against the City shall derogate from or in any way invalidate, offset, or prevent the enforcement of the indemnification owed by the Owner to the City under this section 7, and such enforcement may proceed whether or not caused or contributed to by any negligence or act or omission of the City and notwithstanding any fault or uncured default of the City under this Agreement.
- d. None of the provisions within the paragraphs of this section 7 may be construed as a waiver of the sovereign immunity granted to the City by the Commonwealth of Virginia Constitution, statutes and case law to the extent that it applies.
- e. Every provision within the paragraphs of this section 7 shall survive the expiration or termination of this Agreement.

8. **Notices.** Notices under this Agreement shall be in a signed writing and shall be considered given when mailed by certified mail return receipt requested or hand delivered to the other party at the following addresses stated in this Section 8.

Any signed written notice to the Owner shall be sent to:

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Any signed written notice to the City shall be sent to:

City of Richmond, Department of Public Utilities  
Water Resources Division

730 East Broad Street, 8<sup>th</sup> Floor  
Richmond, Virginia 23219

with a copy of the signed written notice sent to:

City of Richmond, Office of the City Attorney  
900 East Broad Street, 4<sup>th</sup> Floor  
Richmond, Virginia 23219

Either party may change any of its contact and address information given above by giving notice in writing stating its new address to the other party.

9. **Waiver.** The failure of the City to insist upon the strict performance of any provision of this Agreement shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of this Agreement at any time. Waiver of any breach of this agreement shall not constitute waiver of a subsequent breach.
10. **Enforcement.** Pursuant to Section 14-331(a)(5) of the Code, this Agreement shall be enforceable by all appropriate governmental parties.
11. **Agreement to Run with Land.** This Agreement shall run with the land and be binding upon the Owner's heirs, successors and assigns in title.
12. **Authorization.** The individual executing this Agreement on behalf of the Owner represents that he or she is duly authorized to bind the Owner to the terms and provisions of this Agreement.

**SIGNATURE ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the Owner has hereunto affixed their signature as of the day and year first hereinabove written.

**Owner**

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

I, \_\_\_\_\_, Notary Public in and for the City/County and State aforesaid, do hereby certify that \_\_\_\_\_, whose name is signed to the foregoing agreement, bearing date \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me in my City/County and State aforesaid and acknowledged the same to be their act and deed.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

Notary Registration Number:  
My commission expires: \_\_\_\_\_