

RESOLUTION NO. 13196-19

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN AGREEMENT FOR COST SHARING OF THE HAMPTON ROADS SANITATION DISTRICT HUXLEY PLACE TO MIDDLE GROUND BOULEVARD INTERCEPTOR FORCE MAIN EXTENSION (JR012100) AND CITY OF NEWPORT NEWS HUXLEY PLACE SANITARY SEWER REHABILITATION AND REPLACEMENT ("AGREEMENT").

WHEREAS, HRSD is constructing its Huxley Place to Middle Ground Boulevard (now City Center Boulevard) Interceptor Force Main Project ("the HRSD Project") as shown on Exhibit 1 to the Agreement For Cost Sharing Of The Hampton Roads Sanitation District Huxley Place to Middle Ground Boulevard Interceptor Force Main Extension (JR012100) And City Of Newport News Huxley Place Sanitary Rehabilitation And Replacement ("the Agreement"); and

WHEREAS, the City is constructing its Huxley Place Sanitary Rehabilitation and Replacement Project ("the City Project"), shown as Exhibit 2 to the Agreement; and

WHEREAS, the construction of the HRSD Project and the City Project ("the Improvements") will necessitate the construction, installation of force main, rehabilitation, bypassing, replacement of existing gravity sewers and laterals, and abandonments of existing force main; and

WHEREAS, HRSD and the City agree that it is in the best interests of the parties to have the improvements constructed together; and

WHEREAS, HRSD agrees to include the reconstruction of the City Project as part of the construction of the HRSD Project, in accordance with the approved plans and specifications; and

WHEREAS, the City agrees to reimburse HRSD for that portion of the costs of the construction of the Project attributable to the City Project under the terms set forth in the Agreement; and

WHEREAS, the estimated cost of the construction of the HRSD Project is \$2,681,000 and the estimated cost of the City Project is \$605,000.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News, Virginia:

1. That it hereby authorizes and directs the City Manager to execute, the City Clerk to attest, and the City Attorney to approve as to form, on behalf of the City of Newport News, Virginia, the Agreement by and between the City of Newport News, Virginia, and Hampton Roads Sanitation District and to execute any further documents necessary to effectuate the Agreement, after being reviewed by the City Attorney.

2. That a copy of the said Agreement is attached hereto and made a part hereof.
3. That this resolution shall be in effect on and after the date of its adoption, January 8, 2019.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON JANUARY 8, 2019

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

AGREEMENT FOR COST SHARING
OF THE
HAMPTON ROADS SANITATION DISTRICT
HUXLEY PLACE TO MIDDLE GROUND BOULEVARD INTERCEPTOR FORCE MAIN
EXTENSION (JR012100)
AND
CITY OF NEWPORT NEWS
HUXLEY PLACE SANITARY REHABILITATION AND REPLACEMENT

THIS AGREEMENT FOR COST SHARING (the "Agreement"), between the CITY OF NEWPORT NEWS ("CITY") and the HAMPTON ROADS SANITATION DISTRICT ("HRSD"), is entered into this ____ day of _____, 2018 (the "Effective Date").

RECITALS

R:1. HRSD is constructing its Huxley Place to Middle Ground Boulevard Interceptor Force Main Project as shown on **Exhibit 1** (the "HRSD Facilities"); and

R:2. The CITY is constructing its Huxley Place Sanitary Rehabilitation and Replacement Project as shown on **Exhibit 2** (the "CITY Facilities") as part of the City of Newport News Capital Improvement Program; and

R:3. The construction of the HRSD Facilities and the CITY Facilities (collectively referred to as the "Improvements") will necessitate the construction, installation of force main, realignment, rehabilitation, bypassing, replacement of existing gravity sewers and laterals, and abandonment of existing force main; and

R:4. HRSD and the CITY agree that it is in the best interest of the parties to have the Improvements constructed together; and

R:5. HRSD agrees to include the construction of the CITY Facilities as part of the construction of the HRSD Facilities, in accordance with the approved plans and specifications; and

R:6. The CITY agrees to reimburse HRSD for that portion of the costs of the construction of the Improvements attributable to the CITY Facilities under the terms and conditions set forth herein.

TERMS

NOW THEREFORE, in consideration of the above provisions and agreements

set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. DESIGN OF IMPROVEMENTS

A. Plans and Specifications

1. HRSD will employ Rummel, Klepper, and Kahl, LLP ("ENGINEER"), to prepare plans and specifications for the HRSD Facilities. A location map of the HRSD Facilities is included as Exhibit 1.
2. CITY will employ Rummel, Klepper, and Kahl, LLP ("ENGINEER"), to prepare plans and specifications for the CITY Facilities. A location map of the CITY Facilities is included as Exhibit 2.
3. ENGINEER, along with HRSD and the CITY, will meet to coordinate, review, and approve a set of construction documents (the "Final Plans and Specifications") for the Improvements.

B. Payment of the Design Costs

1. HRSD will compensate the ENGINEER for all engineering design costs and any amendments related to the HRSD Facilities.
2. CITY will compensate the ENGINEER for all engineering design costs and any amendments related to the CITY Facilities.

C. Compliance

All design work shall comply with HRSD Standards for use in Engineered Construction Projects, latest edition, and the Hampton Roads Planning District Commission Regional Construction Standards, latest edition and the City of Newport News Construction Standards and Special Provisions, latest edition. Any changes to the Final Plans and Specifications shall be approved by HRSD and the CITY.

II. CONSTRUCTION OF IMPROVEMENTS

A. Cost of Construction:

1. The total cost of the Improvements, as more particularly defined by

the Final Plans and Specifications, prepared by the ENGINEER for HRSD and the CITY (the "Improvements Costs") shall include:

- a. Cost of construction of the Improvements;
 - b. Cost of advertising for bids;
 - c. Cost of permits required for the construction of the Improvements;
 - d. Costs for construction contract administration (CA) and construction inspection (CI);
 - e. Any related miscellaneous essential expenses.
2. The current estimated cost of the construction of the HRSD Facilities is \$2,681,000 and the estimated cost of the construction of the CITY Facilities is \$605,000.

B. Approval of Final Plans and Specifications; Contractors; Change Orders

1. HRSD and the CITY agree that before any construction work is to begin under this Agreement, HRSD and the CITY will jointly review and approve the Final Plans and Specifications. This approval shall be in writing, and once approved, the approval as well as the Final Plans and Specifications shall be appended as an addendum to this Agreement..
2. HRSD and the CITY shall review and agree upon the qualifications of the contractor's and subcontractors employed for the Improvements (the "Contractor(s)") prior to award of the construction contract.
3. Contractors shall be responsible for all necessary permits and approvals necessary for the Improvements.
4. HRSD will review and approve change orders related to the HRSD Facilities.
5. CITY will review and approve change orders related to the CITY Facilities.

6. CITY will review and approve scope of work and fee for the construction contract administration and inspections related to the CITY Facilities.

C. Payment of Improvement Costs

1. The Improvements Costs shall be apportioned among the parties as follows:
 - a. HRSD will administer and be responsible for bearing one hundred percent (100%) of the cost of the HRSD Facilities.
 - b. The CITY will administer and be responsible for bearing one hundred percent (100%) of the cost of the CITY Facilities.
 - c. Costs associated with any change to the initial construction cost ("Change Order") shall be as follows:
 - i. HRSD shall be solely responsible for costs due to a Change Order requested by HRSD; and
 - ii. The CITY shall be responsible for costs due to a Change Order requested by the CITY.
2. During the course of construction, HRSD shall compensate the Contractors and other individuals and entities providing materials and/or services related to the Improvements for all Improvement Costs, including those for which the CITY is responsible. The CITY shall reimburse HRSD for all such payments made on its behalf. The CITY shall pay its share of the Improvements Costs to HRSD in one lump sum payment upon completion of construction (as determined by HRSD). HRSD shall provide the CITY with an invoice detailing the CITY's share of the Improvement Costs. Within thirty (30) days of its receipt of such invoice, the CITY shall reimburse HRSD for the CITY's share of the Improvement Costs as detailed in the invoice.
3. The CITY's CA cost will be equal to the final City Facilities Cost when compared to the total project Improvement Cost multiplied by the total CA cost.
 - a.
$$\text{City Facilities Costs} / \text{Total Improvement Costs} \times \text{Total CA Costs} = \text{CITY CA Cost}$$

4. The CITY's CI cost will be equal to the final City Facilities Cost when compared to the total project Improvement cost multiplied by the total CI cost.
 - a.
$$\frac{\text{City Facilities Costs}}{\text{Total Improvement Costs}} \times \text{Total CI Costs} = \text{CITY CI Cost}$$

D. Operation and Maintenance of the Improvements during and after Construction

1. HRSD shall be responsible for operation and maintenance of the HRSD Facilities during and after construction.
2. CITY shall be responsible for operation and maintenance of the CITY Facilities during and after construction.
3. HRSD and the CITY agree to cooperate and coordinate for the operations and maintenance of any interconnections between the HRSD Facilities and CITY Facilities.

III. SCHEDULE

The construction is anticipated to begin by June 1, 2019 and be complete by June 1, 2020. If the construction dates listed herein are substantially delayed, HRSD reserves the right to terminate this Agreement.

III. OBLIGATIONS OF HRSD AND THE CITY

A. Public Hearing

HRSD and the CITY will be responsible for holding a public hearing if required. The CITY will coordinate and reserve the location, and assist HRSD in such public hearing.

B. Bidding of the Improvements

1. HRSD agrees to issue bidding documents for construction of the Improvements. The CITY agrees to provide administrative support during the bidding phase. In particular the CITY shall:
 - a. Attend the preconstruction meeting.
 - b. Provide timely responses to the ENGINEER for any

questions, requests for clarification, or addenda during the bidding phase.

- c. Provide miscellaneous support to HRSD as required during the bidding phase.

2. HRSD will receive bids for construction of the Improvements. 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 the Improvements. The bidding procedures shall be conducted in accordance with the Virginia Public Procurement Act and the HRSD Procurement Policy.

C. Administration

HRSD shall provide contract administration of the Improvements. The CITY shall reimburse HRSD for the contract administration cost of the CITY Facilities.

D. Inspection

HRSD shall provide full-time inspection of the Improvements. The CITY shall reimburse HRSD for the inspection costs of the CITY Facilities. The inspector(s) shall have the authority to assure the Improvements are constructed in accordance with the Final Plans and Specifications.

E. Deeds and Easements

1. HRSD shall obtain any and all necessary fee simple deeds and/or deeds of easement needed for the HRSD Facilities.
2. CITY shall obtain any and all necessary fee simple deeds and/or deeds of easements for the CITY Facilities.

F. Correction of Construction Defects in the Improvements

HRSD shall require the Contractors to provide a performance and payment bond for the full amount of the construction of the Improvements. The construction contract shall also provide for a warranty of the Contractor's work against construction defects in the Improvements and shall require the Contractor to correct such defects that are reported by

HRSD or the CITY within one (1) year of the final acceptance of the Improvements.

G. Construction Record Drawings

ENGINEER shall provide HRSD and the CITY approved construction record drawings in accordance with HRSD Standards for use in Engineered Construction Projects and the City of Newport News Construction Standards and Special Provisions, latest edition.

IV. GOVERNING LAW

This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, 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. Regardless of where actually delivered and accepted, this contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

V. 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 the other 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 within sixty (60) days of the defaulting party's receipt of written notice of such breach from the non-defaulting party; or by mutual agreement of the CITY and HRSD.

VI. 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:

For: HRSD
By U.S. Postal Service

By Overnight Mail:

Agreement for Cost Sharing of the HRSD Huxley Place to Middle Ground Boulevard Interceptor Force
Main Extension (JR012100) and City of Newport News Huxley Place Sanitary Rehabilitation &
Replacement

General Manager
P. O. Box 5911
Virginia Beach, VA 23471-0911
Telephone: (757) 460-4242

General Manager
1434 Air Rail Avenue
Virginia Beach, VA 23455

With Copy to:

Conway H. Shield, III
Jones, Blechman, Woltz and Kelly
701 Town Center Drive, Suite 200
Newport News, VA 23606

For: City of Newport News

Cynthia D. Rohlf, City Manager
City of Newport News, Virginia
2400 Washington Avenue
Newport News, VA 23607
Telephone: (757) 727-6392
Facsimile: (757) 926-3505

With Copy to:

City Attorney
2400 Washington Avenue
Ninth Floor City Hall
Newport News, VA 23607

VII. ASSIGNMENT

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

VIII. AMENDMENT

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

IX. 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.

X. DAMAGES

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

XI. INSURANCE

HRSD and the CITY have the right to review and approve insurance coverage in the various insurance categories that HRSD and the CITY deem 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 or the CITY and the insurance coverage shall be maintained during the term of this Agreement.

XII. 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.

XIII. 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, acts of the government, 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.

XIV. INDEPENDENT CONTRACTOR

If the Contractor(s) hire subcontractors or independent contractors, HRSD and the CITY have the right to approve them by reviewing their requisite experience and knowledge to complete the work assigned.

XV. SUBCONTRACTOR

If any Contractors or subcontractors are selected by any party to this Agreement for completion of the work contemplated herein, HRSD has the right to approve the same.

XVI. WAIVER

No waiver of the 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 parties waiving the breach.

The failure of any 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.

XVII. 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.

Agreement for Cost Sharing of the HRSD Huxley Place to Middle Ground Boulevard Interceptor Force
Main Extension (JR012100) and City of Newport News Huxley Place Sanitary Rehabilitation &
Replacement

IN WITNESS WHEREOF, the Hampton Roads Sanitation District Commission (HRSD) 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 _____, 2018.

HAMPTON ROADS SANITATION DISTRICT

By _____
Edward G. Henifin, P.E., General Manager

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

The foregoing agreement was acknowledged before me this _____ day of _____, 2018, by Edward G. Henifin, P.E., General Manager, Hampton Roads Sanitation District.

Notary Public

My commission expires:

Registration No.:

Agreement for Cost Sharing of the HRSD Huxley Place to Middle Ground Boulevard Interceptor Force
Main Extension (JR012100) and City of Newport News Huxley Place Sanitary Rehabilitation &
Replacement

IN WITNESS WHEREOF, the City of Newport News (CITY) has caused this Agreement to be signed by the City Manager on its behalf pursuant to Resolution adopted by the City Council on _____, 201_.

CITY OF NEWPORT NEWS

By _____
Cynthia D. Rohlf, City Manager

ATTEST:

City Clerk

COMMONWEALTH OF VIRGINIA,
CITY OF NEWPORT NEWS, to-wit:

The foregoing Agreement was acknowledged before me this _____ day of _____, 201_, by Cynthia D. Rohlf, City Manager, City of Newport News, Virginia.

Notary Public

My commission expires:

Registration No.:

Approved as to Form and Correctness:

Approved as to Content:

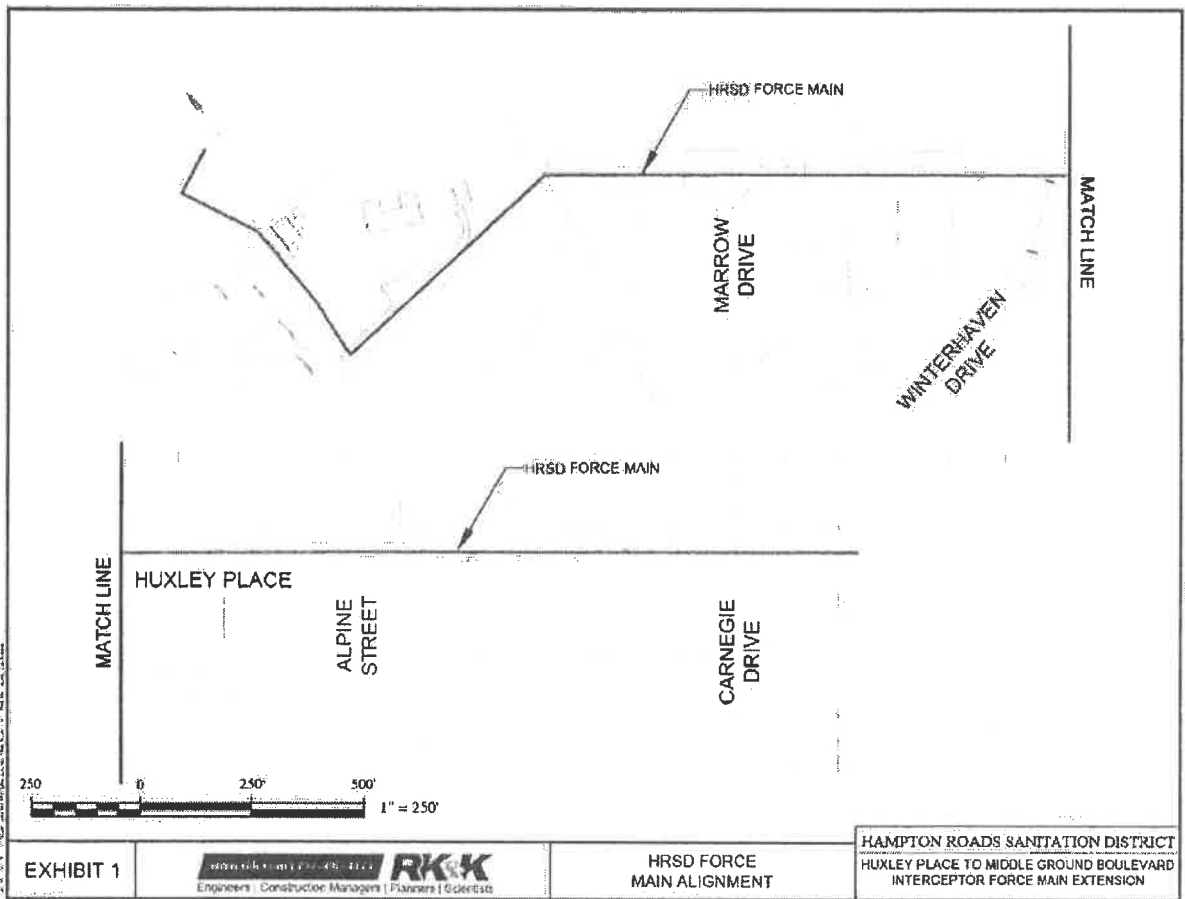
Deputy City Attorney

Director of Utilities

Agreement for Cost Sharing of the HRSD Huxley Place to Middle Ground Boulevard Interceptor Force Main Extension (JR012100) and City of Newport News Huxley Place Sanitary Rehabilitation & Replacement

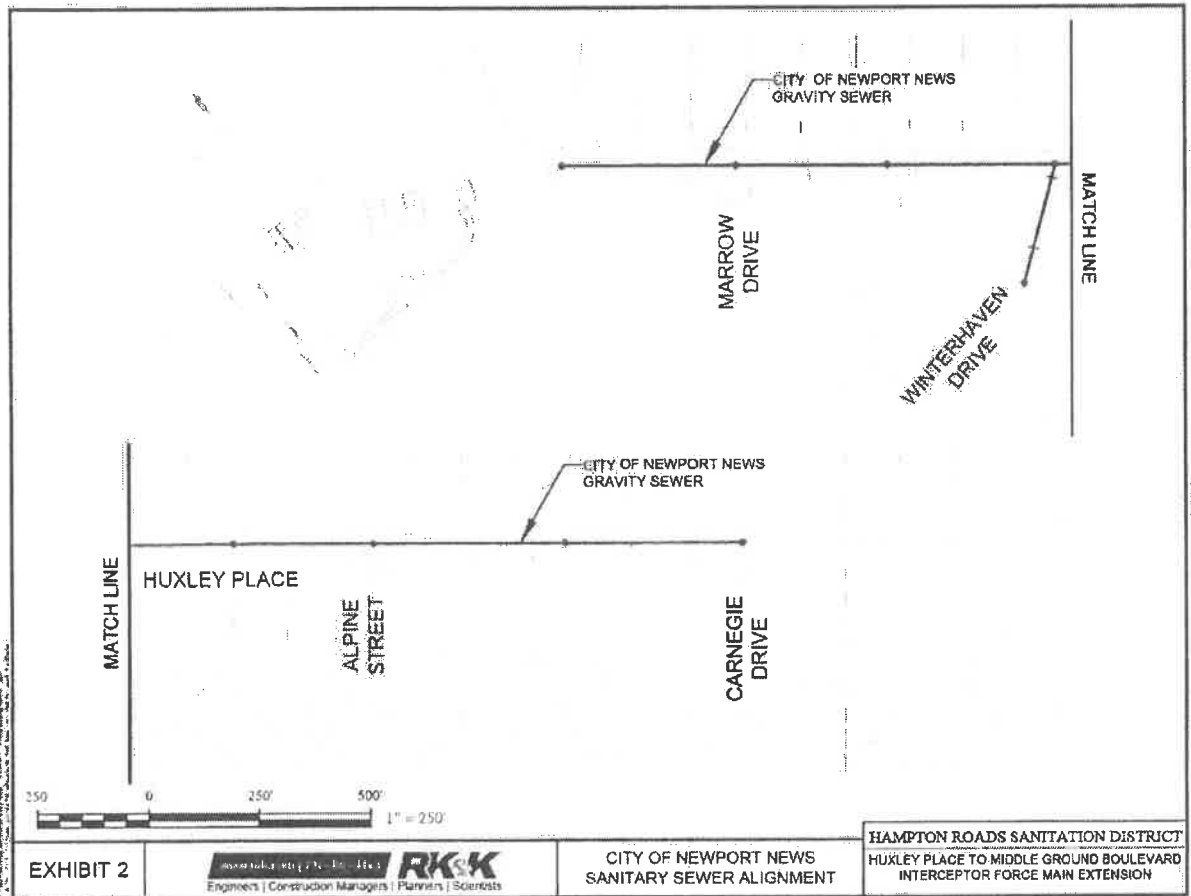
Exhibit 1

HRSD Facilities Location Map



Agreement for Cost Sharing of the HRSD Huxley Place to Middle Ground Boulevard Interceptor Force Main Extension (JR012100) and City of Newport News Huxley Place Sanitary Rehabilitation & Replacement

Exhibit 2



City Facilities Location Map