

**OUTFALL TRANSFER AGREEMENT BETWEEN THE CITY OF ALEXANDRIA,
VIRGINIA AND THE CITY OF ALEXANDRIA SANITATION AUTHORITY
CONCERNING WET WEATHER WASTEWATER STORAGE AND CONVEYANCE
FACILITIES**

This Outfall Transfer Agreement (“Agreement”) is entered this ___ day of ____, 2018 by and between the City of Alexandria, a Virginia municipal corporation (“**City**”) and the City of Alexandria, Virginia Sanitation Authority, a public body corporate and politic organized under the Virginia Water and Waste Authorities Act, Title 15.2, Chapter 51 of the Virginia Code, doing business as Alexandria Renew Enterprises (“**Alexandria Renew**”). The City and Alexandria Renew shall be referred to as the “**Parties**” and individually as “**Party**.”

RECITALS

- A. Alexandria Renew provides wastewater treatment and conveyance to City residents in accordance with the Sewerage Service Agreement between the City of Alexandria, Virginia Sanitation Authority and the City of Alexandria, Virginia dated 1st day of September, 1954 as amended June 25, 1974 (collectively referred to as the “**Service Agreement**”). Alexandria Renew owns and operates a treatment plant, interceptor sewers, pump stations and related facilities (referred to herein as the “**Authority System**” and described as the Sewage Disposal System in the Service Agreement). The City owns and operates both a combined sewer system and a separate sanitary sewer collection system (referred to herein collectively as the “**City Collection System**” and described as the City System in the Service Agreement).
- B. Alexandria Renew provides wastewater treatment and conveyance to Fairfax County under the Amended and Restated Service Agreement between the City of Alexandria, Virginia Sanitation Authority and the Board of Supervisors of Fairfax County, Virginia dated 1st day of October, 1998. The County owns and operates a separate sanitary sewer collection system.
- C. The Virginia Department of Environmental Quality (“**VDEQ**”) has issued Virginia Pollutant Discharge Elimination System (“**VPDES**”) Permit No. VA0087068 to the City (“**City VPDES Permit**”), including effluent limitations and monitoring requirements, for the City’s Combined Sewer System (“**CSS**”). This VPDES permit requires the City to develop, periodically update, and implement a Long Term Control Plan (“**LTCP**”) to reduce combined sewer overflows.
- D. VDEQ has issued VPDES Permit No. VA0025160, including effluent limitations and monitoring requirements, and General Permit Registration No. VAN010059 for the Alexandria Renew Enterprises Water Resources Recovery Facility to Alexandria Renew (“**Alexandria Renew VPDES Permit**”).

- E. The City submitted a LTCP Update (“**LTCPU**”), as required by its VPDES permit for the City's CSS in 2016. Alexandria Renew is developing a plan to address sanitary sewer overflows (“**SSOs**”) from the Hooffs Run Junction Chamber as required by the Alexandria Renew VPDES Permit. One option for remediation is a combined solution to address (1) the City’s CSO control needs and (2) Alexandria Renew’s need to minimize SSOs caused by wet weather flows from the City’s separate sewer systems and the County’s separate sewer system.
- F. During the 2017 General Assembly a law was enacted accelerating the schedule provided in the Final 2016 LTCPU Report (2017 Va. Acts. Reg. Sess. Ch. 827 (uncodified)) (“**2017 CSO Law**”). The 2017 CSO Law requires 1) “By July 1, 2023, (the City shall) initiate construction activities necessary to bring the CSO outfalls into compliance; 2) “By July 1, 2025, (the City shall) bring the CSO outfall into compliance with Virginia law, the Federal Clean Water Act, and the Presumption Approach described in the EPA CSO Control Policy, unless a higher level of control is necessary to comply with a TMDL and 3) “The City shall report annually to VDEQ on progress”. In addition, the General Assembly required VDEQ to determine what actions by the City are necessary to attain compliance no later than July 1, 2018.
- G. The Parties agree that a global solution is more efficient and that Alexandria Renew is better suited to finance, design, permit, construct, operate, own and maintain such a solution as further provided herein. To that end, the Parties now wish to transfer the ownership of outfalls 001, 002, 003, and 004, including associated control structures, as shown in Exhibit A (collectively, “**Outfalls**”) from the City to AlexRenew pursuant to the terms of this Agreement. The Parties further intend that ownership of these Outfalls shall remain with AlexRenew even in the event of relocation. The Parties agree to take whatever action may be required of them to effect AlexRenew’s continuing ownership of all the Outfalls notwithstanding any changes in circumstances such as relocation or sewer system reconfiguration/modification.
- H. Upon the legal transfer of ownership of the Outfalls to Alexandria Renew, the Parties agree to jointly pursue assignment of the CSO VPDES permit responsibility for these outfalls to Alexandria Renew.
- I. The Parties are negotiating an agreement regarding cost share for the West Side Wet Weather Facilities (“**WSWWF**”) to address excess separate sanitary sewer flows with Fairfax County, Virginia (the “**Cost Share Agreement**”). The Cost Share Agreement will define the cost allocation between Alexandria and Fairfax County as to the WSWWF; but does not address the (1) financing of the cost-share allocated to Alexandria (“**Alexandria Share**”) or (2) design, construction, ownership, operation and permitting for the WSWWF.
- J. Alexandria Renew and the City intend to pursue grant funding and any other potential sources of capital for part of the Alexandria Share in order to help control the wastewater rate burdens which the City ratepayers will bear.

THEREFORE, in consideration of these Recitals and the undertakings set forth in this Agreement, the City and Alexandria Renew, each pursuant to due and proper authority, agree as provided herein.

SPECIFIC PROVISIONS

- 1. Responsibility and Ownership.** Upon Closing, as defined below, Alexandria Renew shall become responsible for the financing, design, construction, operation and maintenance, and permitting of the Outfalls in accordance with the implementation schedule approved by VDEQ. Alexandria Renew shall own the Outfalls. Such Ownership and Responsibility includes:

 - a. Alexandria Renew shall be responsible for the design and construction of the LTCPU, including the selection and contracting with one or more general contractors, construction management firms, and any other necessary professionals or craftsmen.
 - b. Alexandria Renew shall be solely responsible for all necessary environmental and other permits and licenses for the construction and operation of the Outfalls, regulatory filings, for required statements and reports, land use approvals, and for utilities for the operation of the Outfalls. Copies of any such permits and licenses and applications therefore, regulatory filings, and statements and reports shall be provided to the City.
 - c. Alexandria Renew shall be solely responsible for the operation and maintenance of the Outfalls and shall be the sole owner of the Outfalls. Alexandria Renew shall operate and maintain the Outfalls in accordance with the VPDES permit, as it may be amended from time to time. Alexandria Renew and the City shall share with each other drafts and final Standard Operating Procedures (“SOPs”) relating to the CSS and Outfalls.
- 2. Closing.** Closing under this Agreement (the “**Closing**”) shall be made on the date which is ten (10) days following the satisfaction of all conditions precedent to Closing described below or upon such other date as mutually agreed (the “**Closing Date**”). At Closing, the City will convey the Outfalls to Alexandria Renew by Special Warranty Deed.
- 3. Conditions Precedent to Closing.** The City and Alexandria Renew agree that the obligation of Alexandria Renew to acquire the Outfalls and to finance, design, construct, operate, maintain, and permit the LTCPU is subject to the satisfaction, as of the Closing Date, of each of the following conditions precedent:

 - a. Execution of an amended and restated Service Agreement between the City and Alexandria Renew.
 - b. Execution of an agreement between the City and Alexandria Renew allocating obligations for the Nine Minimum Controls required for the CSS (“**NMC Agreement**”).

- c. Approval of an amendment to the Charter for Alexandria Renew to clarify that CSO Management is authorized and to extend the time of expiration of the Charter until 2068.
- d. Transfer of the existing permit or a reissued permit for the CSS based on the LTCPU, including the transfer of all CSO related waste load allocation from the Chesapeake Bay TMDL.
- e. Approval by the Planning Commission pursuant to Section 9.06 of the City Charter.
- f. Approval of the transfer of ownership by the City Council.
- g. Approval of the transfer of ownership by the Alexandria Renew Board, if required.

Alexandria Renew and the City may agree to waive any of the foregoing conditions precedent not required by law and proceed to closing.

4. **VPDES Permitting.** The City and Alexandria Renew will petition VDEQ to transfer the City's VPDES permit to Alexandria Renew pursuant to section Y. of the City VPDES Permit. The Parties will support this transfer and, if required, provide their written consent. The City will coordinate a phased transfer of compliance responsibilities to Alexandria Renew such that all compliance related activities are transferred by permit reissuance anticipated in August 2018.
5. **Compliance with CSO Law**
 - a. Following the Closing Date, Alexandria Renew will be responsible for compliance with the CSO Law in all respects including but not limited to providing the annual progress report to VDEQ for the Outfalls and constructing the LTCPU on a schedule as needed to meet the requirements of the CSO Law as it may be amended.
 - b. The City and Alexandria Renew will coordinate and cooperate regarding any proposed amendments to the CSO Law.
6. **Development Approval Process.** The Parties agree that the conveyance of the Outfalls to Alexandria Renew from the City will not change the current process established between the Parties for approval of new development, including development connecting to the CSS, except as required by the NMC Agreement or by future EPA or VDEQ regulatory requirements.
7. **Pre-Planning and Design.** Nothing herein shall be interpreted to prevent Alexandria Renew from initiating planning, design, and other preliminary work for the LTCPU prior to the Closing Date. Expenditures on the LTCPU by Alexandria Renew prior to VDEQ approval may qualify for reimbursement pursuant to the Cost Share Agreement.
8. **Financing.** Alexandria Renew shall be solely responsible for financing the Alexandria Share of the costs to design, build, permit and operate the LTCPU. Both parties recognize that Alexandria Renew's source of funds for this obligation are rates, fees and charges paid by Alexandria Renew's customers located in the City of Alexandria.

Alexandria Renew has authority pursuant to the Virginia Water and Waste Authorities Act to adjust its rates, fees and charges as necessary to pay the Alexandria Share. The sources of funding, terms, closing and other aspects thereof shall be solely the responsibility of Alexandria Renew and it shall be the sole obligated party to any lender(s) or bondholder(s). If the City obtains any funds for this project through Federal or State funding, the City will work with Alexandria Renew and the applicable agencies to have the funding transferred to Alexandria Renew for the Project.

9. **Design.** Alexandria Renew shall be responsible for the selection of and contracting with engineers and other professionals to design the LTCPU, as well as for their supervision and interactions therewith throughout the design process. To the extent the City has obtained or will obtain studies and reports related to the design of the LTCPU or other related projects, such as environmental or geotechnical investigations, the City will provide copies of such studies and reports to Alexandria Renew and its design professionals.
10. **Regulatory Review by City.** The City will review and approve or disapprove the construction proposed for the LTCPU in accordance with the requirements of the Zoning Ordinance, the City Code, the Virginia Uniform Statewide Building Code and all other applicable City laws and regulations (“City Laws”). Alexandria Renew shall provide to the City for review the plans and specifications for the LTCPU in sufficient detail to comply with City Laws, and shall provide such drafts for review as they are available. The City will use its best efforts, consistent with all applicable laws, to expedite the regulatory review and approval of the design and construction. In order to facilitate the expedited approval of plans for the LTCPU, the City will participate in the Regulatory Team approach described in Section 11(a) below to assist Alexandria Renew in developing plans that meet the requirements of all City ordinances.
11. **Project Team Approach.** In recognition of the partnership between the City and Alexandria Renew to deliver this project in compliance with the CSO Law, the Parties will utilize a “Project Team” approach which will consist of:
 - a. *City Regulatory Team:* The City will prioritize regulatory reviews and approvals required for the LTCPU project to support the delivery time lines. To facilitate the regulatory review, the City will establish a team made up of representatives from each department tasked with any part of the regulatory review of the construction proposed for the LTCPU to serve as a workgroup to review and discuss all technical aspects of the LTCPU project that require approval pursuant to City Laws. A City team leader will be designated to be a point of contact for Alexandria Renew to resolve any questions about compliance with the regulatory requirements. The Regulatory Team will meet on a regular basis as determined by the team and at the request of either party if needed. Alexandria Renew will provide the City Regulatory Team with any information about the project needed for regulatory review that the City Regulatory Team may request within a reasonable time of the request.

- b. *Alexandria Renew Project Coordination Working Meetings.* Alexandria Renew will coordinate with the City through the project development and implementation. To facilitate such coordination, representatives from City staff chosen by the City and familiar with the program will attend the Alexandria Renew Project Coordination Working Meetings on topics related to the LTCPU Project development and implementation. Alexandria Renew is solely responsible for the timing and content of these meetings. The timing and content of these meetings will evolve as the program continues to meet the needs of the Alexandria Renew program team. Consistency in City staff attendance is important for optimum coordination and efficiency.
 - c. *City Council-Alexandria Renew CSO Project Review Workgroup.* In order to facilitate the team approach throughout the organizations and to provide a liaison for input and feedback from the City, the City Council and the Alexandria Renew Board will each designate two members of their boards to serve on a joint workgroup to review and guide the plans, designs, implementation, costs and financing to minimize community impacts and maximize overall community benefits (“**Project Review Workgroup**”). The Project Review Workgroup will be supported by designated core staff from each entity and shall meet as determined necessary by the members of the workgroup.
 - d. *Fees.* Both parties agree not to charge the other for any review, permitting, discharge and all other fees, that would normally be charged to the other party during the planning, design and construction of all projects directly related to the LTCPU facilities for the four Outfalls.
- 12. Public Outreach and Community Relations.** Alexandria Renew shall conduct public outreach and community relations and in coordination with the City, will develop an overall outreach strategy and communications plan in accordance with principles of the City of Alexandria What’s Next Alexandria Handbook for Civic Engagement. Such outreach strategy and communication plan shall include regular meetings with all outreach groups as deemed necessary to facilitate project outcomes.
- 13. Land Acquisition; Condemnation.** To the extent condemnation is necessary to construct and/or operate the LTCPU, the City agrees to assist Alexandria Renew in any condemnation action initiated by Alexandria Renew, provided, however, Alexandria Renew will be responsible for all costs of acquisition of the property including payment of the Alexandria share of compensation to the landowner.
- 14. Access to City Property.** During the planning, design, and construction of the LTCPU facilities it may become apparent that access to property owned by the City may be necessary in order to facilitate the LTCPU project. Alexandria Renew will inform City staff and the Project Review Work group if it will request access to City-owned property as soon as reasonable. As these needs arise, the City will consider each request weighing the needs of the LTCPU project against the current use of the particular property by the

City, will seek City Council authorization if needed, and will consider what, if any, compensation would be required to the City for the use of the property.

15. **Secondary Benefits.** By January 31st of each succeeding year following operation of the LTCPU upgrade, Alexandria Renew will apply the Chesapeake Bay TMDL Watershed Implementation Plan Alexandria CSO allocations in effect at that time for nitrogen, phosphorus and sediment to any CSS overflows and to the measured captured and treated combined flows through the Alexandria Renew treatment plant. If after this analysis, allocation of nitrogen, phosphorus and sediment remains unapplied, such credits will be calculated using Alexandria Renew's actual previous year annual reported nitrogen, phosphorus and sediment performance and traded to the City for its use.
16. **Continuation of Outfalls.** The Outfalls provide an important flood control function for the City and protect both the Authority System and the City Collection System. Once Alexandria Renew obtains ownership of the Outfalls pursuant to this Agreement, it agrees to maintain those Outfalls indefinitely unless the City and Alexandria Renew agree in writing to the closure or relocation of such outfalls.

GENERAL PROVISIONS

17. **No Partnership.** Nothing contained in this Agreement, and no action taken or omitted pursuant to this Agreement shall create any partnership entity, joint venture, or association. No rights are provided to third parties.
18. **Dispute Resolution.** The Parties agree to informally, and in good faith, pursue resolution of any dispute arising out of this Agreement within 15 days of one Party notifying the other in writing of an informal dispute. If necessary, the Parties shall submit such dispute to formal non-binding mediation, which shall culminate no later than 90 days after one Party notifies the other in writing of a formal dispute. Such deadline may be extended by mutual agreement of the Parties. Any formal dispute arising out of this Agreement which is not resolved by such mediation may be submitted for resolution by a court of competent jurisdiction of the Commonwealth of Virginia.
19. **Partial Invalidity.** If any provisions of this Agreement are found to be void or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall be unaffected and shall remain in full force and effect.
20. **Parties' Representations.** The Parties represent that they have the authority to enter into this Agreement, that its execution does not violate any legal requirement to which it is subject, and that the individuals signing this Agreement on their behalf have been granted the requisite power and authority by public resolution in a duly advertised public meeting to bind the Party on whose behalf they sign to its provisions.
21. **Binding Effect.** This Agreement shall apply to and shall be binding upon the Parties

hereto, as well as their elected officials, appointees, officers, directors, employees, agents, successors, and assigns, and to the extent permitted by applicable law all persons whether natural or corporate acting under, through or for them.

22. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein.
23. **No Modification of Service Agreement.** This Agreement shall complement, and is intended to not conflict with the Service Agreement. Nothing in this Agreement shall be interpreted to modify or amend the Service Agreement.
24. **Modification; Waiver.** No modification, termination, or waiver of any provision of this Agreement shall be binding upon a Party unless in writing and signed by the Party against whom enforcement is sought. All Parties have participated in the preparation of this Agreement and have received advice of legal counsel; and this Agreement shall not be construed against any Party based on the identity of the drafter of this Agreement.
25. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.
26. **No Assignment.** Neither Party may assign this Agreement without the express written consent of the other Party.
27. **Non-Merger.** Notwithstanding any other terms of this Agreement, the provisions of this Agreement shall survive Closing hereunder and shall not be merged into the Special Warranty Deed.
28. **Term.** The term of this Agreement shall begin on the date first stated above, and shall run until terminated by the Parties.
29. **Rights and Remedies.** The terms and conditions of this Agreement may be enforced as a contract by specific performance by either Party hereto. All rights and remedies available to the Parties at law and equity in accordance with the laws of the Commonwealth of Virginia are preserved.
30. **Other Documents.** The Parties recognize the potential need for such other documents, instruments, applications and other writings necessary for the implementation of this Agreement, and the Parties agree to execute and deliver such further items in reasonable form as may be needed.
31. **Compliance with Law.** In implementing their respective responsibilities under this Agreement, the Parties shall comply with applicable laws.
32. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
33. **Headings.** Any headings of the paragraphs or other portions of this Agreement are for convenience of reference only, and shall not affect the meaning or construction of any

provision hereunder.

34. **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing directed to a Party at its address set forth below. A Party may designate a new address by written notice to the other Party. All notices shall be effective and be deemed delivered upon receipt as evidenced by a signed certified mail receipt, signed overnight delivery receipt, or signed acceptance of hand delivery receipt.

City of Alexandria

Attn: Director, Transportation and Environmental Services
301 King St.
Alexandria, VA 22314

With a copy to:

Alexandria City Attorney
301 King St., Room 1300
Alexandria, VA 22314

Alexandria Renew Enterprises

Attn: Chief Executive Officer
1800 Limerick Street
Alexandria, VA 22314

With a copy to:

Jonathan Rak
McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Tysons Corner, VA 22102-4215

Signatures Appear on the Following Pages

Agreed and Approved by Resolution: City of Alexandria

By: _____

Printed Name: _____

Date: _____

Approved as to form:

By: _____
City Attorney

Date: _____

City/County of ____

Commonwealth/State of _____

Sworn to and subscribed before me this _____ day of _____, 2018, by

Witness my hand and official seal.

My Commission Expires Notary Public

Agreed and Approved by Resolution: Alexandria Renew Enterprises

By: _____

Printed Name: _____

Date: _____

Approved as to form:

By: _____

Date: _____

City/County of ____

Commonwealth/State of _____

Sworn to and subscribed before me this _____ day of _____, 2018, by

Witness my hand and official seal.

My Commission Expires Notary Public