

INTRODUCED: June 26, 2023

AN ORDINANCE No. 2023-211

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Memorandum of Agreement between the City of Richmond and the Virginia Department of General Services for the purpose of setting forth the responsibilities of the parties for the replacement and relocation of utilities in Capitol Square in the city of Richmond.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

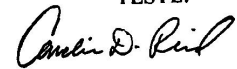
PUBLIC HEARING: JUL 24 2023 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Memorandum of Agreement between the City of Richmond and the Virginia Department of General Services for the purpose of setting forth the responsibilities of the parties for the replacement and relocation of utilities in Capitol Square in the city of Richmond. The Memorandum of Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

A TRUE COPY:
TESTE:


City Clerk

AYES: 7 NOES: 0 ABSTAIN: _____

ADOPTED: JUL 24 2023 REJECTED: _____ STRICKEN: _____



City of Richmond

900 East Broad Street
2nd Floor of City Hall
Richmond, VA 23219
www.rva.gov

Master

File Number: Admin-2023-0461

File ID: Admin-2023-0461

Type: Request for Ordinance or Resolution

Status: Regular Agenda

Version: 1

Reference:

In Control: City Clerk Waiting Room

Department:

Cost:

File Created: 05/31/2023

Subject:

Final Action:

Title:

Internal Notes:

Code Sections:

Agenda Date: 06/26/2023

Indexes:

Agenda Number:

Patron(s):

Enactment Date:

Attachments: Newer Version of Exhibit E1 and F1 (no ductbank)

Enactment Number:

Contact:

Introduction Date:

Drafter: Adam.Hohl@rva.gov

Effective Date:

Approval History

| Version | Seq # | Action Date | Approver | Action | Due Date |
|---------|-------|-------------|------------------|----------------|-----------|
| 1 | 1 | 5/31/2023 | Adam Hohl - FYI | Notified - FYI | |
| 1 | 2 | 6/1/2023 | April Bingham | Approve | 5/31/2023 |
| 1 | 3 | 6/1/2023 | Adam Hohl - FYI | Notified - FYI | |
| 1 | 4 | 6/1/2023 | Robert Steidel | Approve | 6/1/2023 |
| 1 | 5 | 6/1/2023 | Adam Hohl - FYI | Notified - FYI | |
| 1 | 6 | 6/5/2023 | Lincoln Saunders | Approve | 6/12/2023 |
| 1 | 7 | 6/5/2023 | Adam Hohl - FYI | Notified - FYI | |
| 1 | 8 | 6/21/2023 | Mayor Stoney | Approve | 6/14/2023 |
| 1 | 9 | 6/21/2023 | Adam Hohl - FYI | Notified - FYI | |

History of Legislative File

| Version: | Acting Body: | Date: | Action: | Sent To: | Due Date: | Return Date: | Result: |
|----------|--------------|-------|---------|----------|-----------|--------------|---------|
| | | | | | | | |

Text of Legislative File Admin-2023-0461

City of Richmond
Intracity Correspondence

DATE: May 31, 2023 EDITION: 1

TO: The Honorable Members of City Council THROUGH: The Honorable Levar M. Stoney, Mayor
THROUGH: J.E. Lincoln Saunders, Chief Administrative Officer
THROUGH: Robert Steidel, Deputy Chief Administrative Officer, Operations

FROM: April N. Bingham, Director, Department of Public Utilities

RE: Memorandum of Agreement for Utilities Around Capitol Square

ORD. OR RES. No.

PURPOSE: To authorize the Chief Administrative Officer (the "CAO") to execute a Memorandum of Agreement for Utilities Around Capitol Square (the "MOA").

REASON: An ordinance authorizing the CAO to execute the MOA is needed because without it, the CAO lacks the authority to sign the MOA. The MOA is needed because the General Assembly has made funding for a Commonwealth of Virginia Department of General Services project contingent upon full execution of the MOA.

RECOMMENDATION: Adoption.

BACKGROUND: The Commonwealth is the sole owner of property within the city known as "Capitol Square." In accordance with Item C-74 of Chapter 56 of the 2020 Special Session I, Virginia Acts of Assembly, the Commonwealth is authorized to make certain improvements and safety and security enhancements in and to Capitol Square (the "Capitol Improvements"). Additionally, item C-48.10, Paragraph E of Chapter 854 of the 2023 Session Virginia Acts of Assembly, states

Funding for the Department of General Services' project to Improve Capitol Campus utilities shall not be released until the department and the City of Richmond have signed an agreement allowing the state to work on any needed improvements to the utilities running through Capitol Square

O&R Request

Page 2 of 2

In connection with the Capitol Improvements, the City is willing to allow for the relocation and replacement of certain utilities and the equipment, facilities, and appurtenances related to such utilities and the transfer of certain utilities and the equipment, facilities, and appurtenances related to such utilities. Some of this work has already occurred, and the MOA delineates utilities work to be completed by the City and Commonwealth as well as utility transfers by the City and Commonwealth.

FISCAL IMPACT / COST: None.

FISCAL IMPLICATIONS: None.

BUDGET AMENDMENT NECESSARY: None.

REVENUE TO CITY: None.

DESIRED EFFECTIVE DATE: Upon adoption. REQUESTED INTRODUCTION DATE: June 26, 2023. CITY COUNCIL PUBLIC HEARING DATE: July 24, 2023. REQUESTED AGENDA: Consent.
RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing and Transportation Standing Committee

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: Commonwealth of Virginia Department of General Services

AFFECTED AGENCIES: Department of Public Utilities RELATIONSHIP TO EXISTING ORD. OR RES.: None. REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS: Memorandum of Agreement for Utilities Around Capitol Square

STAFF: April N. Bingham, Director, Department of Public Utilities 804-646-5205
MEMORANDUM OF AGREEMENT
FOR UTILITIES AROUND CAPITOL SQUARE

This MEMORANDUM OF AGREEMENT FOR UTILITIES AROUND CAPITOL SQUARE (this "MOA") is made this day of , 2023, by and between the CITY OF RICHMOND, a body politic and municipal corporation of the Commonwealth of Virginia, acting by and through the CITY OF RICHMOND DEPARTMENT OF PUBLIC UTILITIES (the "City"), and the COMMONWEALTH OF VIRGINIA, acting by and through the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF GENERAL SERVICES (the "Commonwealth").

RECITALS:

WHEREAS, the Commonwealth is the owner of certain real property within the City of Richmond, Virginia commonly known as Capitol Square consisting of 28.526 acres ("Capitol Square") and more particularly described in the "Deed of Vacation of Lot Lines and Consolidation of Multiple Parcels" dated May 23, 2018 and recorded in the Clerk's Office of the Circuit Court of the City of Richmond, Virginia as Instrument Number 18011067; and

WHEREAS, in accordance with § 2.0, Item C-74 of Chapter 56 of the 2020 Special Session I, Virginia Acts of Assembly, the Commonwealth is authorized to make certain improvements and safety and security enhancements in and to Capitol Square (collectively, the "Capitol Improvements"); and

WHEREAS, in accordance with Ordinance No. 2023- , adopted , 2023 by the City Council of the City of Richmond, the City is authorized to enter this MOA; and

WHEREAS, in connection with the Capitol Improvements, the City and the Commonwealth have agreed to (i) the relocation and replacement of certain utilities and the equipment, facilities, and appurtenances related to such utilities (collectively, the "Utilities Work") and (ii) the transfer of certain utilities and the equipment, facilities, and appurtenances related to such utilities (the "Utilities Transfers"); and

WHEREAS, the City and the Commonwealth wish to set forth their agreement with regard to the Capitol Improvements, Utilities Work, Utilities Transfers and the other matters set forth in this MOA.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this MOA and

for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby mutually agree as follows:

1. Recitals and Exhibits. The Recitals set forth above and the Exhibits attached to this MOA are incorporated into the terms of this MOA by this reference and made a part hereof.
2. Utilities Work.
 - a. Utilities Work to be Completed by the City (the "City Utilities Work"):
 - i. The City, at its sole cost and expense, will design and construct a new waterline within City right-of-way to be located in that area labeled "NEW CITY WATER MAIN" on EXHIBIT A1 & A2, attached hereto (the "New Waterline"). The City will take all steps necessary to ensure that the construction and installation of the New Waterline will not interfere with the 2026 Commonwealth of Virginia gubernatorial inauguration (the "Inauguration").
 - ii. The Commonwealth may provide, in its sole and absolute discretion, a written notice (a "Cap Notice") to the City that the six inch (6") waterline located in 11th Street south of E. Broad Street and more particularly shown on EXHIBIT A1 & A2 as "ABANDON WATER MAIN" (the "11th St. Main") is no longer required. Within sixty (60) days after the City's receipt of the Cap Notice, the City will, at the City's sole cost and expense, cut and cap the 11th St. Main and remove the fire hydrant now or formerly served by the 11th St. Main, repairing any damage resulting from such removal.
 - iii. The City, at the City's sole cost and expense, will cause the redirection of stormwater away from that portion of 10th Street lying south of E. Broad Street, as labeled "Abandon Sewer" on Exhibit B1 and B2 attached hereto, in a manner so as to further direct such stormwater away from Capitol Square.
 - b. Utilities Work to be Completed by the Commonwealth (the "Commonwealth Utilities Work"):
 - i. The Commonwealth, at its sole cost and expense, will cause the relocation of the six inch (6") domestic and eight inch (8") DC fire meter set, currently located within Capitol Square approximately in that area shown as "EXISTING WATER METERS" on EXHIBIT A1 & A2, to a new location shown as "NEW WATER METERS" on EXHIBIT A1 & A2, or such other area as deemed necessary or desirable by the Commonwealth. Prior to commencement, the Commonwealth's Plans and Specifications (hereinafter defined) will show that the relocated meters and service lines can be constructed in the requested location in a manner that allows them to adequately serve the intended purpose.
 - ii. The Commonwealth, at its sole cost and expense, will replace the streetlighting system within Capitol Square serving Bank Street, Governor Street, Old 14th Street, and E. Grace Street, as deemed necessary or desirable by the Commonwealth in its sole and absolute discretion.
 - iii. The Commonwealth will, at its sole cost and expense, construct a conduit system for the existing streetlights located in the ROW Transfer Areas (defined below).
 - iv. The Commonwealth, in the performance of Commonwealth Utilities Work, will comply with the City's applicable utilities laws, guidelines, specifications, or standards, as duly adopted or amended that, in each instance, are consistently imposed by the City and that are consistent with utilities industry standards.
 - c. Construction of Utilities Work. Each party agrees to provide the other with detailed plans and specifications of the City Utilities Work and the Commonwealth Utilities Work, as applicable, at least thirty (30) days prior to commencement of such work (the "Plans and Specifications"). All Utilities Work will be done and performed in a good and workmanlike manner and in accordance with the Plans and Specifications.
 - d. Substantial Completion. The City will substantially complete construction of the City Utilities Work within Capitol Square no later than two (2) years after the Effective Date (hereinafter defined), and the Commonwealth will have one (1) additional year after such two (2) year period to substantially complete the

Commonwealth Utilities Work so that all Utilities Work will be substantially completed no later than three (3) years after the Effective Date. For the avoidance of doubt, the City will perform the City Utilities Work pursuant to Section 2.a.i in City right-of-way and such City Utilities Work is, thereby, not subject to the two-year Substantial Completion requirement of this Section 2.d. For purposes of this MOA, "Substantial Completion" means installation, inspection, testing and activation of each party's respective Utilities Work including all appurtenances and above grade restoration.

e. Commonwealth Utilities Work Performed by the City. If the City, at the request of the Commonwealth, undertakes any of the Commonwealth Utilities Work described in Section 2.b., then the Commonwealth shall reimburse the City for the reasonable costs of such work within sixty (60) days after the Commonwealth's receipt and acceptance of an invoice therefore.

f. Notices by Commonwealth. The Commonwealth will provide any notice or request to the City to perform Utilities Work under this Section 2 in writing no later than October 1, 2023.

3. Utilities Transfers by the City.

a. Water and Sewer. Upon Substantial Completion of all Utilities Work, the City, at its sole cost and expense will, subject to the necessary approvals of City Council of the City of Richmond (the "City Council"), take all steps the Commonwealth deems necessary or desirable, including, without limitation, legal abandonment by quitclaim deed or other instrument, to facilitate the transfer to the Commonwealth of (a) the existing sixteen inch (16") waterline serving Capitol Square and the 11th St. main, both labeled as "ABANDON WATER MAIN" on EXHIBIT A1 & A2; and (b) the northern portion of the current 12" stormwater line within 10th Street, and extending into Capitol Square, approximately in that area shown as "ABANDON SEWER" on EXHIBIT B1 & B2, including physical disconnection by cutting and capping of same. Further, upon Substantial Completion of the Utilities Work, the City will, subject to the necessary approvals of City Council, convey as-is to the Commonwealth any and all interest the City may have to the combined sewer lines located within 10th Street, Capitol Street, Governor Street, Old 14th Street, and Grace Street as shown and more particularly described as "CONVEY COMBINED SEWER TO THE COMMONWEALTH" on EXHIBIT C1 & D1, attached hereto.

b. Street Lighting. Upon Substantial Completion of all Utilities Work, the City will, subject to the necessary approvals of City Council, convey as-is to the Commonwealth any and all interest the City has to any lighting system and any equipment, appurtenance, and facilities related thereto (the "Original Streetlighting System"), located within Capitol Square, shown as "Convey Street Lighting to the Commonwealth" on EXHIBIT E1 & F1, attached hereto.

4. Utilities Transfers by the Commonwealth. Notwithstanding Section 3.b, the City will retain ownership of the main ductbank located in Bank Street within the ROW Transfer Areas located approximately as shown on EXHIBIT E1 & F1 (the "Main Ductbank"). If the Commonwealth at any time deems it necessary or advisable to relocate for the Commonwealth's convenience the Main Ductbank and any appurtenant conduits within the ROW Transfer Areas, the City shall relocate the Main Ductbank or such conduits to a place acceptable to the Commonwealth with consultation by the City, provided the Commonwealth, for no additional consideration, shall grant unto the City such replacement easement as may be necessary to effect such relocation, subject to the same rights, privileges, and conditions, as herein set forth, and the Commonwealth shall reimburse the City for the reasonable, direct costs of such relocation.

5. Actions Completed.

a. Streetlights. Except for the light poles on Grace Street and at the intersection of Old 14th Street and Grace Street, the City has disconnected all lines to the Original Streetlighting System (hereinafter defined) leaving Capitol Square, including the existing light pole located on Governor Street opposite the Jefferson

Building, as directed by the Commonwealth in the Disconnection Notice, and has conveyed, as-is, all City-owned streetlighting systems and any equipment, facilities, and appurtenances thereto, located within the ROW Transfer Areas (including any streetlight-related rights) to the Commonwealth.

b. Waterlines.

i. The Commonwealth has caused the existing dual two inch (2") domestic and six inch (6") DC fire meter set located on the southeast corner of that building commonly known as the Patrick Henry Building situated along Governor Street to be connected to, and re-served by, an existing eight inch (8") waterline in Governor Street, approximately in that area labeled "NEW LINES TO WATER METERS" on EXHIBIT A1 & A2.

ii. The Commonwealth, at its sole cost and expense, has caused the replacement of the combined twenty four inch (24") sewer line within 10th Street and Capitol Street, in that area shown as "REPLACE SEWER" on EXHIBIT B1 & B2, attached hereto.

c. Bank Street. Per deed dated January 7, 2022 and recorded on January 18, 2022 in the Circuit Court of the City of Richmond as Instrument Number 220001449, (the "ROW Transfer") the City has transferred fee ownership of the ROW Transfer Areas, which were more particularly described, to-wit (the "ROW Transfer Areas"):

ALL THAT certain tract or parcel of land, together with the improvements thereon and all rights, privileges, appurtenances, easements, and rights of way thereunto belonging or in anywise appertaining, consisting of 2.924 acres and situate in the City of Richmond, Virginia, shown and depicted as "BANK STREET 65' ± Right-of-Way," "NORTH 10th STREET 64' ± Right-of-Way," "NORTH 12th STREET 52' ± Right-of-Way," and "GOVERNOR

STREET Variable Width Right-of-Way," on that survey/plat entitled "RIGHT-OF-WAY EXHIBIT, STATE ROUTE 318",

prepared by Austin Brockenbrough, dated October 12, 2021 (the "Plat"), which is recorded in the Clerk's Office of the Circuit Court of the City of Richmond, Virginia as Instrument Number 22-3.

The property conveyed by the ROW Transfer was conveyed in its "AS- IS" condition, without warranty or representation as to its condition, value, or permitted use, including without limitation any warranty or representation with regard to the presence of any toxic or hazardous substances or materials of any nature (including but not limited to petroleum, lead, radon, asbestos, or asbestos-related materials). Furthermore, the conveyance made by the ROW Transfer was made expressly subject to:

A. The City retaining a non-exclusive, non-assignable easement (the "Utility Easement") on, under, and across the ROW Transfer Areas for the sole purpose of inspecting, operating, maintaining, repairing, replacing, improving, and removing those utility facilities owned by the City that were then located within the area of the Utility Easement.

B. The City retaining an easement for ingress and egress across the ROW Transfer Areas for the sole purpose of rendering emergency services, including, but not limited to, fire, medical, and police services consistent with the City and the Commonwealth's respective jurisdictions.

C. Any and all rights, privileges, covenants, easements, conditions, restrictions, and agreements as are of record, insofar as they may be legally applicable to the ROW Transfer Areas.

6. Notices.

D. Any unrecorded utility easements or franchise agreements existing on or before October 1, 2021, including any relocated easements for utilities and any relocated utility lines and related facilities, on, under, over, or across the ROW Transfer Areas.

E. Any encroachments existing on the ROW Transfer Areas as of the date of the Plat regardless of whether such encroachments are identified on the Plat.

a. Notice Deemed Given; Effectiveness. All notices required or permitted under this MOA are deemed to have been properly given, and are effective, at the time such notice is (i) deposited with a nationally recognized overnight delivery service using no more than two (2) business day delivery service or (ii) hand delivered, each method of delivery being addressed to the party's address set forth below, unless notice of a new address is given:

If to the Commonwealth:

Division of Real Estate Services Attn: Director
1100 Bank Street, 3rd Floor Richmond, Virginia 23219

with a copy to

Office of Construction Management for Special Projects Attn: Director
1100 Bank Street, 10th Floor Richmond, Virginia 23219

If to the City:

Department of Public Utilities Attn: Director
730 E. Broad Street, 6th Floor Richmond, Virginia 23219

b. Notice Deemed Received; Time to Act. For any act that a party may or must take within a fixed period of time after having received notice required by this MOA, such period begins (i) for notice sent by a nationally recognized overnight delivery service, on the earlier of the date of actual receipt or two (2) business days after deposit of the notice with such carrier, or (ii) for hand delivered notice, on the date of actual delivery to the recipient or on which such hand delivery is refused.

c. Actual Receipt. Where notice is sent by an alternative method, the notice shall be effective, if actually received by the party or its appointed agent to whom the notice is addressed, as of the date of receipt.

7. No Partnership. Nothing in this MOA shall create or be deemed to create any partnership, joint venture, or agency relationship between the City and the Commonwealth.

8. Parties as Sovereigns. For purposes of this MOA only, the Commonwealth and the City acknowledge that neither has agreed to provide any indemnification or save harmless agreements running to the other. No provision, covenant, or agreement contained in this MOA shall be deemed, in any manner, to be a waiver of the sovereign immunity of the City, or of the Commonwealth, or any of its boards, agencies, or other political subdivisions, from tort or other liability. With respect to tort liability for acts or occurrences with respect to this MOA, including product liability, the Commonwealth and the City are either constitutionally immune (or partially immune) from suit, judgment, or liability, insured, or covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices. No equitable, quasi-contractual, or injunctive remedies, other than those specifically authorized by law, may be used or are effective against the Commonwealth or the City.

9. Subject to Appropriations. All payments and other performance by the City under this MOA are subject to appropriations by the City Council. Consequently, this MOA shall bind the City only to the extent that the City Council appropriates sufficient funds for the City to perform its obligations hereunder.

10. Miscellaneous Provisions. This MOA (a) contains the entire agreement between the parties hereto relating to the subject matter; (b) supersedes all prior and contemporaneous negotiations, understandings

and agreements, written or oral, between the parties hereto; (c) shall not be amended or modified and no waiver of any provision hereof shall be effective unless set forth in a written instrument executed with the same formality as this MOA; (d) shall be governed by the laws of the Commonwealth; and (e) may be executed in one (1) or more counterpart copies, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Execution of this MOA at different times and in different places by the parties hereto shall not affect the validity of this MOA. For purposes of this MOA, "Effective Date" means the date on which the last party to this MOA signs this MOA.

SIGNATURE PAGE TO MEMORANDUM OF AGREEMENT
FOR UTILITIES AROUND CAPITOL SQUARE

CITY OF RICHMOND COMMONWEALTH OF VIRGINIA, DEPARTMENT OF GENERAL SERVICES

By: By:
J.E. Lincoln Saunders Joseph F. Damico
Acting Chief Administrative Officer Director

Date: Date:

Approved as to Form:

—
Assistant City Attorney

**MEMORANDUM OF AGREEMENT
FOR UTILITIES AROUND CAPITOL SQUARE**

This MEMORANDUM OF AGREEMENT FOR UTILITIES AROUND CAPITOL SQUARE (this “**MOA**”) is made this ____ day of _____, 2023, by and between the CITY OF RICHMOND, a body politic and municipal corporation of the Commonwealth of Virginia, acting by and through the CITY OF RICHMOND DEPARTMENT OF PUBLIC UTILITIES (the “**City**”), and the COMMONWEALTH OF VIRGINIA, acting by and through the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF GENERAL SERVICES (the “**Commonwealth**”).

RECITALS:

WHEREAS, the Commonwealth is the owner of certain real property within the City of Richmond, Virginia commonly known as Capitol Square consisting of 28.526 acres (“**Capitol Square**”) and more particularly described in the “Deed of Vacation of Lot Lines and Consolidation of Multiple Parcels” dated May 23, 2018 and recorded in the Clerk’s Office of the Circuit Court of the City of Richmond, Virginia as Instrument Number 18011067; and

WHEREAS, in accordance with § 2.0, Item C-74 of Chapter 56 of the 2020 Special Session I, Virginia Acts of Assembly, the Commonwealth is authorized to make certain improvements and safety and security enhancements in and to Capitol Square (collectively, the “**Capitol Improvements**”); and

WHEREAS, in accordance with Ordinance No. 2023-_____, adopted _____, 2023 by the City Council of the City of Richmond, the City is authorized to enter this MOA; and

WHEREAS, in connection with the Capitol Improvements, the City and the Commonwealth have agreed to (i) the relocation and replacement of certain utilities and the equipment, facilities, and appurtenances related to such utilities (collectively, the “**Utilities Work**”) and (ii) the transfer of certain utilities and the equipment, facilities, and appurtenances related to such utilities (the “**Utilities Transfers**”); and

WHEREAS, the City and the Commonwealth wish to set forth their agreement with regard to the Capitol Improvements, Utilities Work, Utilities Transfers and the other matters set forth in this MOA.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this MOA and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby mutually agree as follows:

1. Recitals and Exhibits. The Recitals set forth above and the Exhibits attached to this MOA are incorporated into the terms of this MOA by this reference and made a part hereof.
2. Utilities Work.
 - a. Utilities Work to be Completed by the City (the “**City Utilities Work**”):

- i. The City, at its sole cost and expense, will design and construct a new waterline within City right-of-way to be located in that area labeled “NEW CITY WATER MAIN” on EXHIBIT A1 & A2, attached hereto (the “**New Waterline**”). The City will take all steps necessary to ensure that the construction and installation of the New Waterline will not interfere with the 2026 Commonwealth of Virginia gubernatorial inauguration (the “**Inauguration**”).
 - ii. The Commonwealth may provide, in its sole and absolute discretion, a written notice (a “**Cap Notice**”) to the City that the six inch (6”) waterline located in 11th Street south of E. Broad Street and more particularly shown on EXHIBIT A1 & A2 as “ABANDON WATER MAIN” (the “**11th St. Main**”) is no longer required. Within sixty (60) days after the City’s receipt of the Cap Notice, the City will, at the City’s sole cost and expense, cut and cap the 11th St. Main and remove the fire hydrant now or formerly served by the 11th St. Main, repairing any damage resulting from such removal.
 - iii. The City, at the City’s sole cost and expense, will cause the redirection of stormwater away from that portion of 10th Street lying south of E. Broad Street, as labeled “Abandon Sewer” on Exhibit B1 and B2 attached hereto, in a manner so as to further direct such stormwater away from Capitol Square.
- b. Utilities Work to be Completed by the Commonwealth (the “**Commonwealth Utilities Work**”):
 - i. The Commonwealth, at its sole cost and expense, will cause the relocation of the six inch (6”) domestic and eight inch (8”) DC fire meter set, currently located within Capitol Square approximately in that area shown as “EXISTING WATER METERS” on EXHIBIT A1 & A2, to a new location shown as “NEW WATER METERS” on EXHIBIT A1 & A2, or such other area as deemed necessary or desirable by the Commonwealth. Prior to commencement, the Commonwealth’s Plans and Specifications (hereinafter defined) will show that the relocated meters and service lines can be constructed in the requested location in a manner that allows them to adequately serve the intended purpose.
 - ii. The Commonwealth, at its sole cost and expense, will replace the streetlighting system within Capitol Square serving Bank Street, Governor Street, Old 14th Street, and E. Grace Street, as deemed necessary or desirable by the Commonwealth in its sole and absolute discretion.
 - iii. The Commonwealth will, at its sole cost and expense, construct a conduit system for the existing streetlights located in the ROW Transfer Areas (defined below).

- iv. The Commonwealth, in the performance of Commonwealth Utilities Work, will comply with the City's applicable utilities laws, guidelines, specifications, or standards, as duly adopted or amended that, in each instance, are consistently imposed by the City and that are consistent with utilities industry standards.
 - c. Construction of Utilities Work. Each party agrees to provide the other with detailed plans and specifications of the City Utilities Work and the Commonwealth Utilities Work, as applicable, at least thirty (30) days prior to commencement of such work (the "**Plans and Specifications**"). All Utilities Work will be done and performed in a good and workmanlike manner and in accordance with the Plans and Specifications.
 - d. Substantial Completion. The City will substantially complete construction of the City Utilities Work within Capitol Square no later than two (2) years after the Effective Date (hereinafter defined), and the Commonwealth will have one (1) additional year after such two (2) year period to substantially complete the Commonwealth Utilities Work so that all Utilities Work will be substantially completed no later than three (3) years after the Effective Date. For the avoidance of doubt, the City will perform the City Utilities Work pursuant to Section 2.a.i in City right-of-way and such City Utilities Work is, thereby, not subject to the two-year Substantial Completion requirement of this Section 2.d. For purposes of this MOA, "**Substantial Completion**" means installation, inspection, testing and activation of each party's respective Utilities Work including all appurtenances and above grade restoration.
 - e. Commonwealth Utilities Work Performed by the City. If the City, at the request of the Commonwealth, undertakes any of the Commonwealth Utilities Work described in Section 2.b., then the Commonwealth shall reimburse the City for the reasonable costs of such work within sixty (60) days after the Commonwealth's receipt and acceptance of an invoice therefore.
 - f. Notices by Commonwealth. The Commonwealth will provide any notice or request to the City to perform Utilities Work under this Section 2 in writing no later than October 1, 2023.
3. Utilities Transfers by the City.
- a. Water and Sewer. Upon Substantial Completion of all Utilities Work, the City, at its sole cost and expense will, subject to the necessary approvals of City Council of the City of Richmond (the "**City Council**"), take all steps the Commonwealth deems necessary or desirable, including, without limitation, legal abandonment by quitclaim deed or other instrument, to facilitate the transfer to the Commonwealth of (a) the existing sixteen inch (16") waterline serving Capitol Square and the 11th St. main, both labeled as "ABANDON WATER MAIN" on **EXHIBIT A1 & A2**; and (b) the northern portion of the current 12" stormwater line within 10th Street, and extending into Capitol Square, approximately in that area shown as "ABANDON SEWER" on **EXHIBIT B1 & B2**, including physical disconnection by cutting and capping of same. Further, upon Substantial Completion of the Utilities Work, the City will, subject to the necessary approvals of City Council,

convey as-is to the Commonwealth any and all interest the City may have to the combined sewer lines located within 10th Street, Capitol Street, Governor Street, Old 14th Street, and Grace Street as shown and more particularly described as “CONVEY COMBINED SEWER TO THE COMMONWEALTH” on **EXHIBIT C1 & D1**, attached hereto.

- b. **Street Lighting.** Upon Substantial Completion of all Utilities Work, the City will, subject to the necessary approvals of City Council, convey as-is to the Commonwealth any and all interest the City has to any lighting system and any equipment, appurtenance, and facilities related thereto (the “**Original Streetlighting System**”), located within Capitol Square, shown as “Convey Street Lighting to the Commonwealth” on **EXHIBIT E1 & F1**, attached hereto.

- 4. **Utilities Transfers by the Commonwealth.** Notwithstanding Section 3.b, the City will retain ownership of the main ductbank located in Bank Street within the ROW Transfer Areas located approximately as shown on **EXHIBIT E1 & F1** (the “**Main Ductbank**”). If the Commonwealth at any time deems it necessary or advisable to relocate for the Commonwealth's convenience the Main Ductbank and any appurtenant conduits within the ROW Transfer Areas, the City shall relocate the Main Ductbank or such conduits to a place acceptable to the Commonwealth with consultation by the City, provided the Commonwealth, for no additional consideration, shall grant unto the City such replacement easement as may be necessary to effect such relocation, subject to the same rights, privileges, and conditions, as herein set forth, and the Commonwealth shall reimburse the City for the reasonable, direct costs of such relocation.

5. **Actions Completed.**

- a. **Streetlights.** Except for the light poles on Grace Street and at the intersection of Old 14th Street and Grace Street, the City has disconnected all lines to the Original Streetlighting System (hereinafter defined) leaving Capitol Square, including the existing light pole located on Governor Street opposite the Jefferson Building, as directed by the Commonwealth in the Disconnection Notice, and has conveyed, as-is, all City-owned streetlighting systems and any equipment, facilities, and appurtenances thereto, located within the ROW Transfer Areas (including any streetlight-related rights) to the Commonwealth.
- b. **Waterlines.**
 - i. The Commonwealth has caused the existing dual two inch (2”) domestic and six inch (6”) DC fire meter set located on the southeast corner of that building commonly known as the Patrick Henry Building situated along Governor Street to be connected to, and re-served by, an existing eight inch (8”) waterline in Governor Street, approximately in that area labeled “NEW LINES TO WATER METERS” on **EXHIBIT A1 & A2**.
 - ii. The Commonwealth, at its sole cost and expense, has caused the replacement of the combined twenty four inch (24”) sewer line within 10th

Street and Capitol Street, in that area shown as “REPLACE SEWER” on **EXHIBIT B1 & B2**, attached hereto.

- c. **Bank Street**. Per deed dated January 7, 2022 and recorded on January 18, 2022 in the Circuit Court of the City of Richmond as Instrument Number 220001449, (the “ROW Transfer”) the City has transferred fee ownership of the ROW Transfer Areas, which were more particularly described, to-wit (the “ROW Transfer Areas”):

ALL THAT certain tract or parcel of land, together with the improvements thereon and all rights, privileges, appurtenances, easements, and rights of way thereunto belonging or in anywise appertaining, consisting of 2.924 acres and situate in the City of Richmond, Virginia, shown and depicted as “BANK STREET 65’ ± Right-of-Way,” “NORTH 10th STREET 64’ ± Right-of-Way,” “NORTH 12th STREET 52’ ± Right-of-Way,” and “GOVERNOR STREET Variable Width Right-of-Way,” on that survey/plat entitled “RIGHT-OF-WAY EXHIBIT, STATE ROUTE 318”, prepared by Austin Brockenbrough, dated October 12, 2021 (the “Plat”), which is recorded in the Clerk’s Office of the Circuit Court of the City of Richmond, Virginia as Instrument Number 22-3.

The property conveyed by the ROW Transfer was conveyed in its “AS-IS” condition, without warranty or representation as to its condition, value, or permitted use, including without limitation any warranty or representation with regard to the presence of any toxic or hazardous substances or materials of any nature (including but not limited to petroleum, lead, radon, asbestos, or asbestos-related materials). Furthermore, the conveyance made by the ROW Transfer was made expressly subject to:

- A. The City retaining a non-exclusive, non-assignable easement (the “Utility Easement”) on, under, and across the ROW Transfer Areas for the sole purpose of inspecting, operating, maintaining, repairing, replacing, improving, and removing those utility facilities owned by the City that were then located within the area of the Utility Easement.
- B. The City retaining an easement for ingress and egress across the ROW Transfer Areas for the sole purpose of rendering emergency services, including, but not limited to, fire, medical, and police services consistent with the City and the Commonwealth’s respective jurisdictions.
- C. Any and all rights, privileges, covenants, easements, conditions, restrictions, and agreements as are of record, insofar as they may be legally applicable to the ROW Transfer Areas.

- D. Any unrecorded utility easements or franchise agreements existing on or before October 1, 2021, including any relocated easements for utilities and any relocated utility lines and related facilities, on, under, over, or across the ROW Transfer Areas.
- E. Any encroachments existing on the ROW Transfer Areas as of the date of the Plat regardless of whether such encroachments are identified on the Plat.

6. Notices.

- a. Notice Deemed Given; Effectiveness. All notices required or permitted under this MOA are deemed to have been properly given, and are effective, at the time such notice is (i) deposited with a nationally recognized overnight delivery service using no more than two (2) business day delivery service or (ii) hand delivered, each method of delivery being addressed to the party's address set forth below, unless notice of a new address is given:

If to the Commonwealth:

Division of Real Estate Services
Attn: Director
1100 Bank Street, 3rd Floor
Richmond, Virginia 23219

with a copy to

Office of Construction Management for Special Projects
Attn: Director
1100 Bank Street, 10th Floor
Richmond, Virginia 23219

If to the City:

Department of Public Utilities
Attn: Director
730 E. Broad Street, 6th Floor
Richmond, Virginia 23219

- b. Notice Deemed Received; Time to Act. For any act that a party may or must take within a fixed period of time after having received notice required by this MOA, such period begins (i) for notice sent by a nationally recognized overnight delivery service, on the earlier of the date of actual receipt or two (2) business days after deposit of the notice with such carrier, or (ii) for hand delivered notice, on the date of actual delivery to the recipient or on which such hand delivery is refused.

- c. Actual Receipt. Where notice is sent by an alternative method, the notice shall be effective, if actually received by the party or its appointed agent to whom the notice is addressed, as of the date of receipt.

7. No Partnership. Nothing in this MOA shall create or be deemed to create any partnership, joint venture, or agency relationship between the City and the Commonwealth.

8. Parties as Sovereigns. For purposes of this MOA only, the Commonwealth and the City acknowledge that neither has agreed to provide any indemnification or save harmless agreements running to the other. No provision, covenant, or agreement contained in this MOA shall be deemed, in any manner, to be a waiver of the sovereign immunity of the City, or of the Commonwealth, or any of its boards, agencies, or other political subdivisions, from tort or other liability. With respect to tort liability for acts or occurrences with respect to this MOA, including product liability, the Commonwealth and the City are either constitutionally immune (or partially immune) from suit, judgment, or liability, insured, or covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices. No equitable, quasi-contractual, or injunctive remedies, other than those specifically authorized by law, may be used or are effective against the Commonwealth or the City.

9. Subject to Appropriations. All payments and other performance by the City under this MOA are subject to appropriations by the City Council. Consequently, this MOA shall bind the City only to the extent that the City Council appropriates sufficient funds for the City to perform its obligations hereunder.

10. Miscellaneous Provisions. This MOA (a) contains the entire agreement between the parties hereto relating to the subject matter; (b) supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties hereto; (c) shall not be amended or modified and no waiver of any provision hereof shall be effective unless set forth in a written instrument executed with the same formality as this MOA; (d) shall be governed by the laws of the Commonwealth; and (e) may be executed in one (1) or more counterpart copies, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Execution of this MOA at different times and in different places by the parties hereto shall not affect the validity of this MOA. For purposes of this MOA, “**Effective Date**” means the date on which the last party to this MOA signs this MOA.

**SIGNATURE PAGE TO
MEMORANDUM OF AGREEMENT
FOR UTILITIES AROUND CAPITOL SQUARE**

CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF GENERAL SERVICES

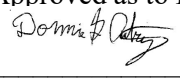
By: _____
J.E. Lincoln Saunders
Acting Chief Administrative Officer

By: _____
Joseph F. Damico
Director

Date: _____

Date: _____

Approved as to Form:



Assistant City Attorney

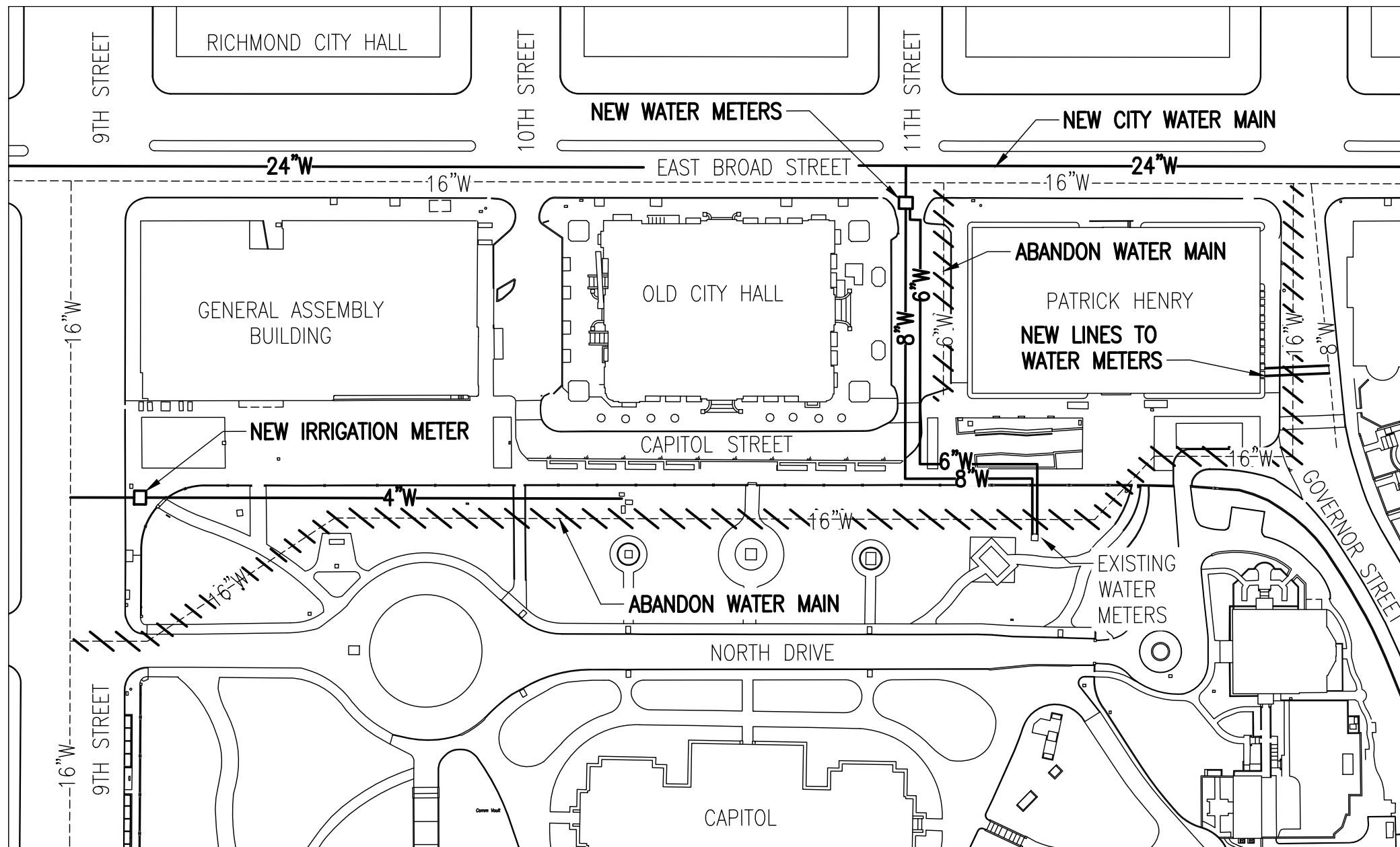


EXHIBIT A1 & A2

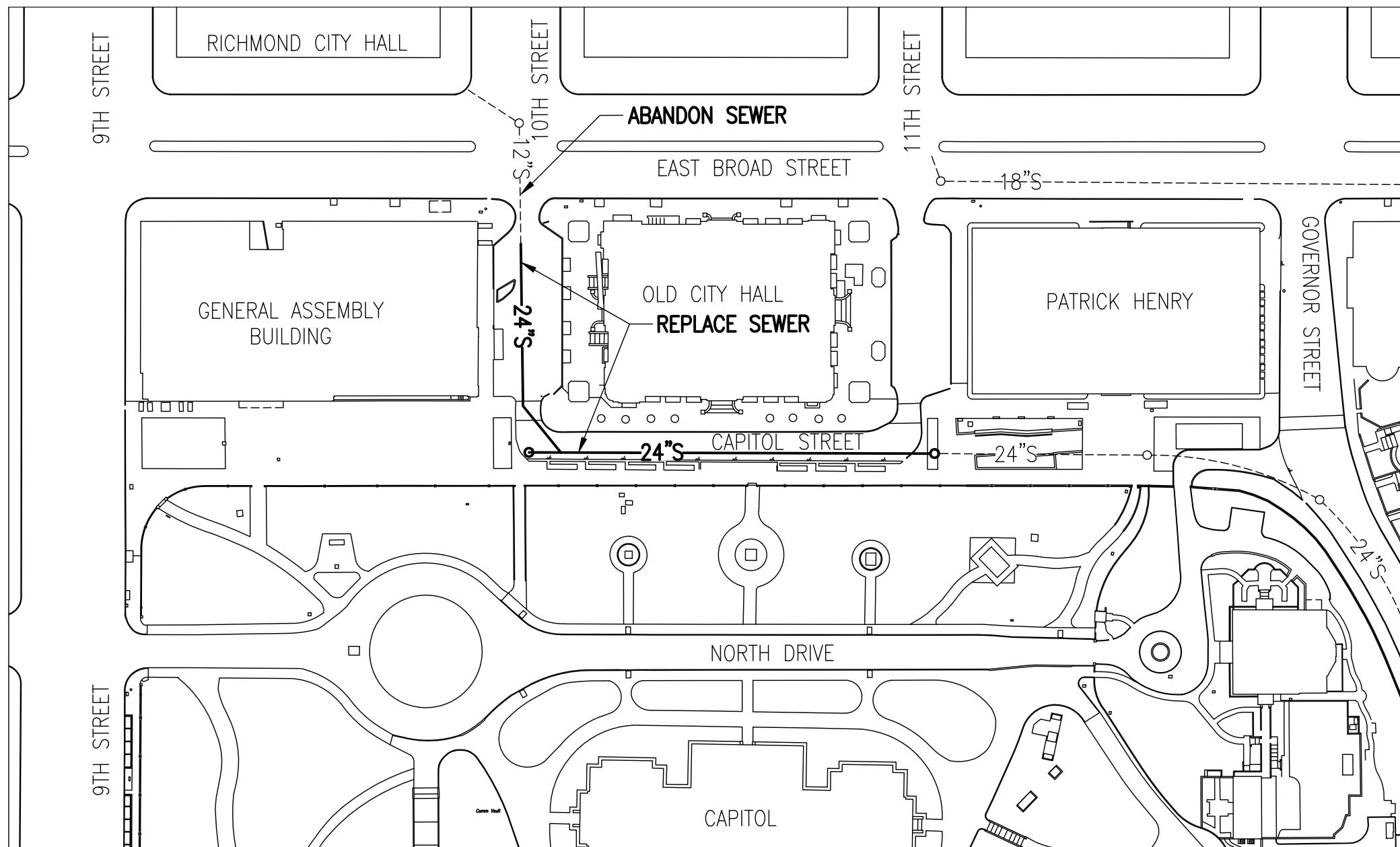


EXHIBIT B1 & B2

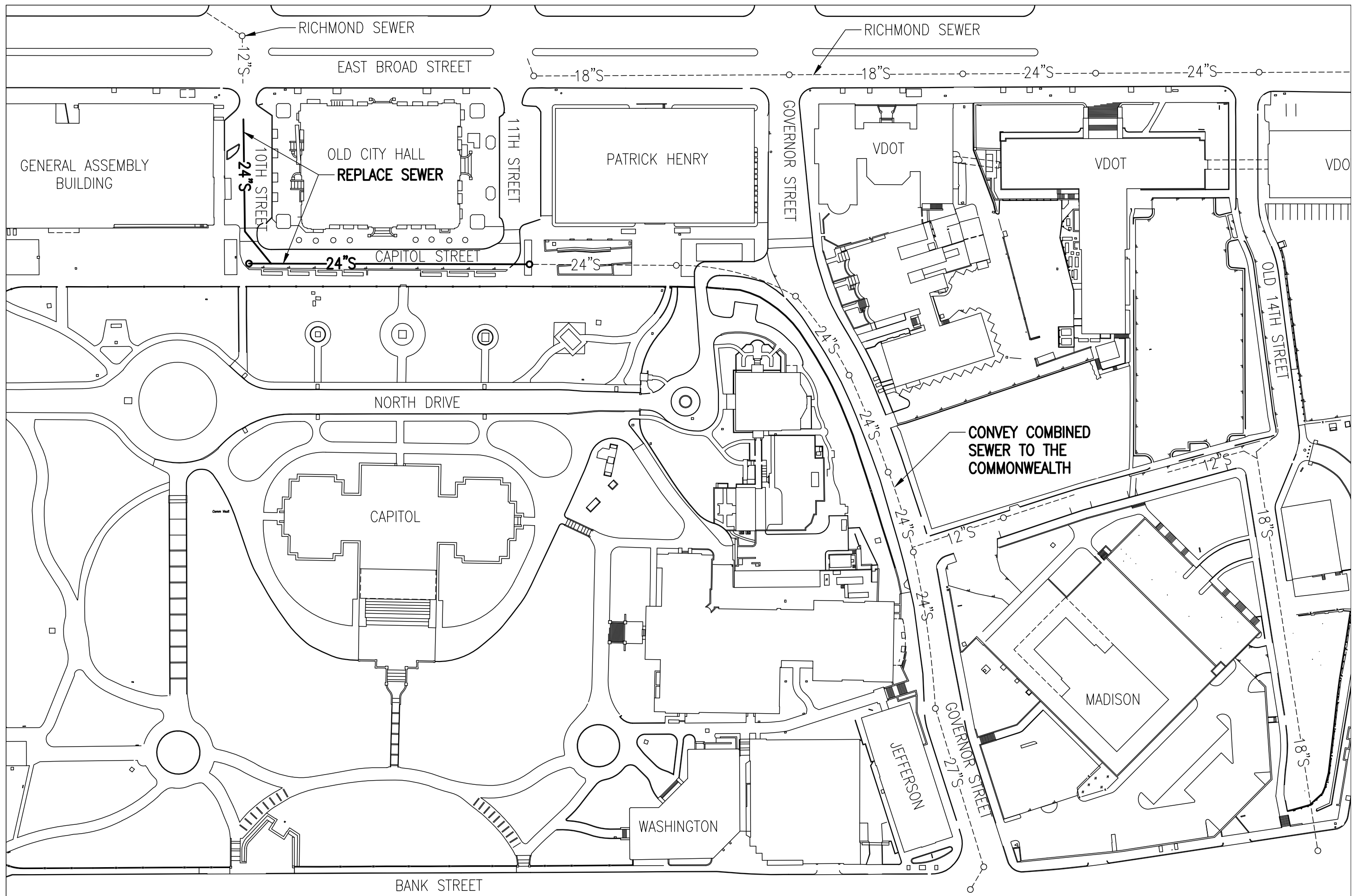


EXHIBIT C1 & D1

