

A RESOLUTION NO. 22-06

A RESOLUTION GRANTING PERMISSION FOR THE CITY OF CHARLESTON, SOUTH CAROLINA TO PROVIDE RETAIL SEWER COLLECTION SERVICES WITHIN THE SERVICE BOUNDARIES OF JAMES ISLAND PUBLIC SERVICE DISTRICT, SOUTH CAROLINA; AND OTHER MATTERS RELATING THERETO.

NOW THEREFORE, be it resolved by the James Island Public Service District Commission (the “**Commission**”), the governing body of the James Island Public Service District, South Carolina (“**District**”), in meeting duly assembled as follows:

Section 1 Findings. The Commission makes the following findings of fact in connection with the adoption of this resolution (this “**Resolution**”):

(a) The District is a South Carolina special purpose district created, pursuant to Act No. 498 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for the year 1961, as amended (the “**Enabling Act**”), for the purpose of providing fire, sewer and sanitation services within its service boundaries (the “**District Service Area**”).

(b) The District currently has outstanding its Sewer System Revenue Bond, Series 1992, and (ii) Sewer System Revenue Bond, Series 1996 (together, the “**USDA Bonds**”), which are secured by the revenues of the District’s sewer utility system. The USDA Bonds were sold to the United States Department of Agriculture, Rural Development (the “**USDA**”), and are intended to protect the District Service Area from future encroachment and annexation by surrounding municipalities through the anti-curtailment provisions of 7 U.S.C. 1926(b) (“**Section 1926(b)**”).

(c) Subsequent to the issuance of the USDA Bonds, the City of Charleston, South Carolina (the “**City**”) has annexed various parts of the District’s service area into its municipal limits, including portions of (i) the “Artillery Point” community, (ii) the “Up-The-Hill Road” community, and (iii) the Clark’s Point community (collectively, the “**Annexed Areas**”). Within the Annexed Areas, the District has identified 270 parcels that are located within the District Service Area, all as more particularly indicated on the map attached hereto as **Exhibit A**.

(d) The Commission of Public Works of the City of Charleston (d/b/a Charleston Water) (“**CWS**”), a commission of public works, organized and existing under the provisions of Title 5, Chapter 31, Article 3 of the Code of Laws of South Carolina 1976, as amended, owns, operates and maintains the City’s water and sewer system.

(e) At the time of annexation, neither the District nor CWS maintained sewer infrastructure that was capable to providing retail sewer service to the Annexed Areas; however, recently, CWS has indicated an opportunity to secure public funding to develop sewer infrastructure necessary to serve the Artillery Point community, and the District, in concert with CWS (and with the support of other local governments in the area), is actively seeking funding to jointly develop sewer infrastructure to serve the other Annexed Areas.

(f) The District, acting together with other stakeholder, including CWS, is committed to improving water quality within the James Island Creek Watershed. In order to fulfill such commitments, and owing to the funding restrictions and limitations attendant to grant monies necessary to make necessary sewer improvements, the District may not be capable of, or best-suited to, provide retail sewer service within all or portions of the Annexed Areas.

(g) In considering the feasibility of providing such service and the availability for funding necessary to make such service a reality, the Commission believes that direct connections for retail sewer service to some or all of the Annexed Areas cannot be “provided” or “made available” by the District. *See Green Valley Special Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460, 477 (5th Cir. 2020).

(h) Additionally, and despite the District’s inability to provide direct retail service to some or all the residents of the Annexed Areas, the District currently maintains sufficient transportation capacity through its existing force main infrastructure, which will permit the District to provide sewer transmission service to any retail customers within the Annexed Areas that will be served by CWS. As a result, all retail customers of CWS will be treated as “transportation customers” of the District and invoices for such services will be provided to CWS accordingly.

(i) For the foregoing reasons, the District believes that the anti-curtilment restrictions of 1926(b) are not implicated by CWS’s planned sewer service to the Artillery Point community or the parties joint efforts to construct sewer infrastructure and provide retail service within the remaining Annexed Areas. However, and in order to fully substantiate the finding and authorizations of the Commission provided by this Resolution and as a condition precedent to the provision of retail sewer service by CWS within the Annexed Areas, the Commission has requested the consent and approval of USDA to the sewer services proposed by CWS within the District Service Area..

Section 2 Conditional Approval of Service; Further Actions.

(A) Subject to the receipt of a fully executed consent and approval by USDA (the “**Consent**”), as proposed by the certificate attached hereto as **Exhibit B**, or alternatively, through a concurrence letter of USDA (in lieu of the Consent, the “**Certificate**”) the Commission generally authorizes CWS to construct, install and thereafter provide retail sewer service to any portion of the Annexed Areas determined by the District as necessary to effectuate sewer services to the Annexed Areas. The limited consent and approval granted hereby is expressly restricted to only those retail sewer connections within the Annexed Areas shown on **Exhibit A** attached hereto and shall not, in any way, be extended to no other property within the District Service Area.

(B) In connection with the approval and delivery of this Resolution, the District Manager is additionally authorized to prepare, review, negotiate, execute, deliver, and provide to letters, agreements, certifications, documents, closing proofs, and undertakings as he shall deem necessary or advisable in order to carry out the transactions contemplated by this Resolution. Any actions previously undertaken by the District Manager, the Commission or District staff in connection with sewer service negotiations for the Annexed Areas prior to the adoption of this

Resolution are ratified and confirmed.

Section 3 Effective Date. This Resolution shall be effective upon its adoption and the receipt of the executed Consent or Certificate by USDA.

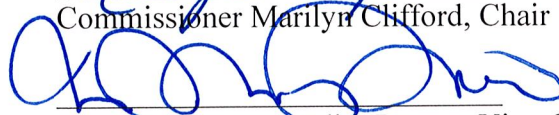
DONE AND RESOLVED, this 27th day of June 2022.



**JAMES ISLAND PUBLIC SERVICE
DISTRICT, SOUTH CAROLINA**



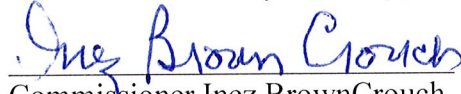
Commissioner Marilyn Clifford, Chair



Commissioner Meredith Poston, Vice-Chair



Commissioner Kathy Woolsey, Secretary



Commissioner Inez BrownCrouch

Commissioner Brenda Grant

Commissioner Alan Laughlin

Commissioner Susan Milliken

EXHIBIT A

MAP OF ANNEXED AREAS

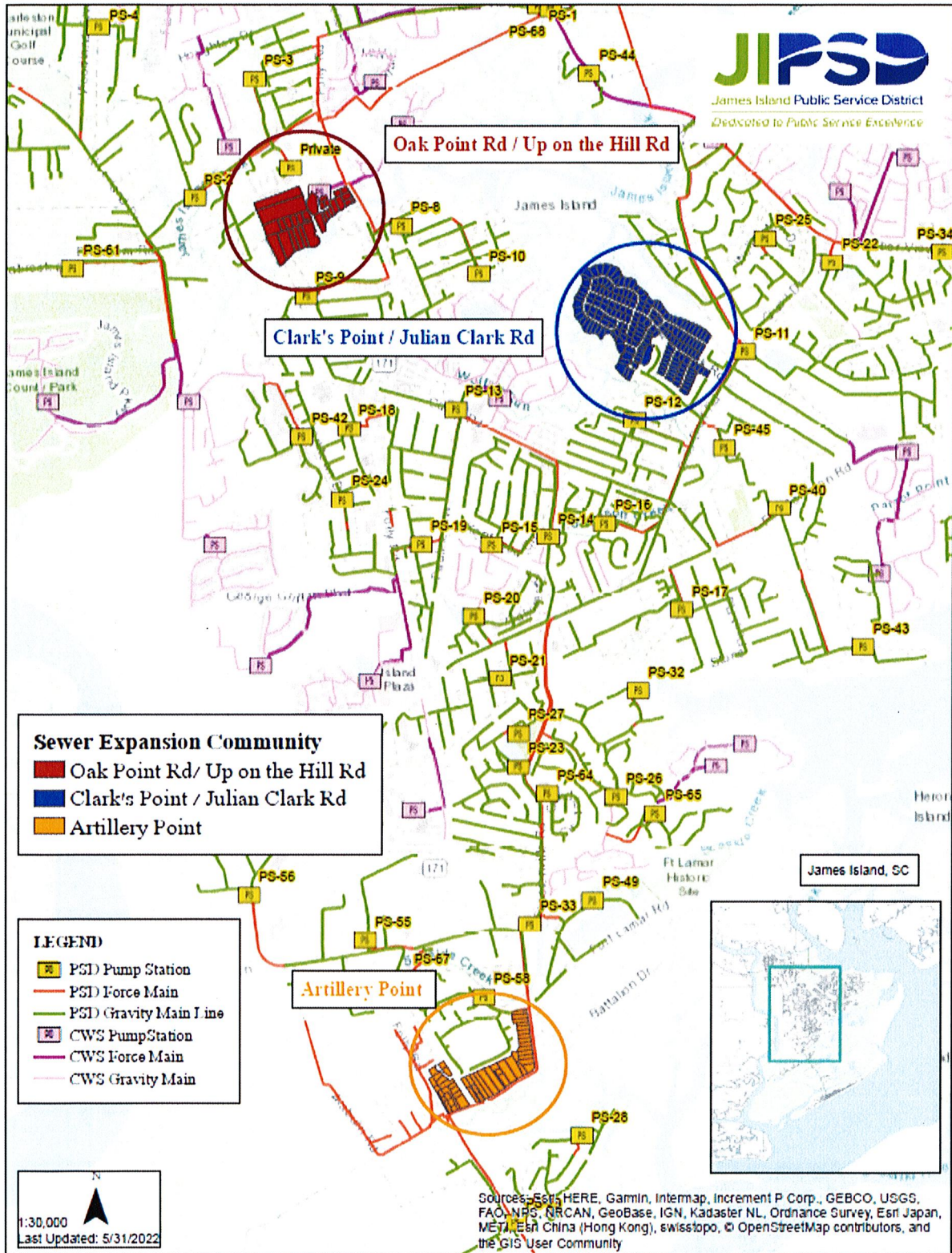


EXHIBIT B

CONSENT AND APPROVAL OF
UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT

The undersigned hereby certifies that s/he is authorized to execute and deliver this Consent and Approval (this “**Consent**”) on behalf of the United States Department of Agriculture, Rural Development (the “**USDA**”) with respect to the following obligations of the of James Island Public Service District (the “**District**”), which are held by USDA: Sewer System Revenue Bond, Series 1992, and (ii) Sewer System Revenue Bond, Series 1996.

The USDA has received and reviewed the terms of that certain resolution of the James Island Public Service District Commission, as the governing body of the District entitled, “A RESOLUTION GRANTING PERMISSION FOR THE CITY OF CHARLESTON, SOUTH CAROLINA TO PROVIDE RETAIL SEWER COLLECTION SERVICES WITHIN THE SERVICE BOUNDARIES OF JAMES ISLAND PUBLIC SERVICE DISTRICT, SOUTH CAROLINA; AND OTHER MATTERS RELATING THERETO” dated _____, 2022 (the “**Resolution**”). Terms using initial capitals herein and not otherwise defined shall have the meanings ascribed thereto in the Resolution.

By granting this Consent, USDA expressly authorizes CWS to construct and thereafter provide retail sewer service to any portion of the Annexed Areas determined by the District as necessary to effectuate sewer services to the Annexed Areas. USDA acknowledges and agrees that the District is incapable of providing retail service to the some or all of the Annexed Areas, but intends to provide transmission service. As a result, the anti-curtailment restrictions applicable to the District under 1926(b) are not implicated by the limited service authorization granted to CWS under the Resolution.

UNITED STATES DEPARTMENT OF AGRICULTURE –
RURAL DEVELOPMENT

By: _____
Name: _____
Community Facilities & Water Environmental Programs
USDA, Rural Development

Dated: _____, 2022

Dave Schaeffer

From: Craven, Rusty - RD, State Office <rusty.craven@usda.gov>
Sent: Monday, July 18, 2022 5:12 PM
To: Lawrence Flynn
Cc: Glover, Dr. Sandra - RD, State Office; Cardwell, Michele - RD, State Office; Hicks, George - RD, State Office; Johnson, Angelia - RD, State Office; Slaughter, Britton - RD, State Office
Subject: JIPSD Consent Request

Lawrence.

Per Michele Cardwell, CP Director, Rural Development grants its consent for JIPSD to authorize Charleston Water System to provide limited retail sewer service within the boundaries of JIPSD as specified in Exhibit A to the Proposed Resolution you submitted on 6/3/22. It is our understanding that these are areas where JIPSD does not have existing service infrastructure and does not intend to serve with collection lines. However, it is also our understanding that JIPSD will provide the transmission services for these areas. This appears to be a valid solution to ensure these citizens are provided improved sewer services that should also provide protection to this environmentally sensitive coastal area.

If you have any questions, please let us know.

Rusty Craven

JARVIS R. CRAVEN | Loan Specialist
Rural Development
U.S. Department of Agriculture
531 Robertson Blvd., Suite A | Walterboro, SC 29488
Phone: 843-549-1822 ext.128 | Toll Free Fax: 855-789-1155
www.rd.usda.gov

“Together, America Prospers”

USDA is an equal opportunity provider, employer, and lender.

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.