



City of Hampton

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

Official Record

Resolution: 18-0328

File Number: 18-0328

Resolution to Approve the First Amendment to Memorandum of Agreement among the Hampton Roads Sanitation District and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the Town of Smithfield; and the Counties of Gloucester, Isle of Wight, and York; and the James City Service Authority to Accelerate the Date HRSD will Assume Regulatory Authority for Wet Weather Overflows

WHEREAS, the Hampton Roads Sanitation District ("HRSD") owns and operates an interceptor sewer system for the Hampton Roads localities, including the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the town of Smithfield; and the counties of Gloucester, Isle of Wight, and York; and the James City Service Authority (the "Localities");

WHEREAS, the Localities individually own and operate sanitary sewer collection systems, which collect sewage within their jurisdictional boundaries and deliver it to the HRSD sewer system for conveyance and treatment;

WHEREAS, due to pipe failures, electrical outages, infiltration and inflow, insufficient capacity in the collection, interceptor and treatment systems, and other factors, untreated sewage has been and is being discharged from various locations in the individual sanitary sewer collection systems and from HRSD to various state waters in the area;

WHEREAS, to address the regional wet weather sewer capacity requirement, on February 23, 2010, HRSD, the Virginia Department of Environmental Quality ("DEQ"), and the United States Environmental Protection Agency ("EPA") entered into a Federal Consent Decree, requiring, among other things, that HRSD work with the Localities to develop a regional wet weather management plan ("RWWMP") to ensure adequate wet weather sewer capacity in HRSD's portion of the regional sewer system;

WHEREAS, on March 10, 2014, HRSD and the Localities entered into a Memorandum of Agreement (the "MOA") wherein HRSD assumed the sole responsibility for financing and implementing an approved RWWMP across the entire region;

WHEREAS, the MOA outlines HRSD and the Localities' respective responsibilities for construction, expansion, operation, and maintenance of the Regional Sanitary Sewer Systems;

WHEREAS, upon full implementation of the RWWMP, HRSD agreed to assume the

Localities' regulatory liability for any wet weather overflows resulting from inadequate capacity;

WHEREAS, on August 26, 2014, the EPA amended the Federal Consent Decree to reflect the hybrid plan, which is an alternative to total regionalization;

WHEREAS, given that the RWWMP has been transferred to HRSD, the RWWMP requirements and conditions under the Federal Consent Decree are no longer applicable to the Localities; the Localities, however, must continue proper management, operation, and maintenance ("MOM") of sanitary sewer infrastructure to prevent unpermitted sanitary sewer overflows and to ensure compliance with the statutory and regulatory provisions.

WHEREAS, currently, HRSD is undertaking the Sustainable Water Initiative for Tomorrow ("SWIFT") project, which treats water that otherwise would be discharged to the Chesapeake Bay watershed to drinking water standards and adding it to the Potomac aquifer;

WHEREAS, on February 21, 2017, the Federal Consent Decree was amended to authorize HRSD to incorporate planning elements in the RWWMP to allow for prioritization of the SWIFT project over certain wet weather capacity projects;

WHEREAS, on September 29, 2017, HRSD submitted a RWWMP to the EPA and DEQ, which prioritizes implementation of the SWIFT project with certain high priority wet weather capacity projects, and reserves development of plan for any additional wet weather capacity action that may be necessary for a Final Measures Plan to be submitted to the EPA and DEQ in 2030;

WHEREAS, HRSD and the Localities desire to amend to MOA to better conform to the RWWMP dated September 29, 2017 by accelerating the date HRSD will assume regulatory authority for wet weather overflows from the Regional Sanitary Sewer System and reaffirming the Localities continuing obligation to properly maintain their respective systems.

WHEREAS, execution of this First Amendment to Memorandum of Agreement must be submitted to the Hampton Roads Planning District Commission by December 2018; and


WHEREAS, Council approves execution of this First Amendment to Memorandum of Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA:


1. That the City's acquiescence of an accelerated deadline for HRSD to assume regional authority for wet weather overflows is hereby approved; and
2. That the City Manager or her designee is hereby authorized to execute the First Amendment to Memorandum of Agreement as set forth in this Resolution and any other documents associated therewith.

approved by the Hampton City Council on 10/10/2018.

Aye: 7 Councilmember Weston Brown, Councilmember Brown, Councilmember Curtis, Vice Mayor Gray, Councilmember Hobbs, Councilmember Snead and Mayor Tuck

Signed by: 
Donnie R. Tuck

Date OCT 10 2018

Attested by: 
Katherine K. Glass

Date OCT 10 2018

**FIRST AMENDMENT TO
MEMORANDUM OF AGREEMENT**

This First Amendment modifies the Memorandum of Agreement (“Agreement”) entered into on the 10th day of March, 2014, by and among the Hampton Roads Sanitation District (“HRSD”); and the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the Town of Smithfield; and the counties of Gloucester, Isle of Wight, and York; and the James City Service Authority (each a “Locality” and collectively, the “Localities”).

WHEREAS, the HRSD and the Localities entered into the Agreement for the purpose of realizing the substantial savings for all parties, collectively, that would be obtained by HRSD assuming sole responsibility for financing and implementing an approved Regional Wet Weather Management Plan (“RWWMP”) across the entire region;

WHEREAS, the Agreement sets forth the respective responsibilities of HRSD and the Localities regarding the construction, expansion, operation, and maintenance of the Regional Sanitary Sewer Systems, including that the Localities would remain responsible for conducting the operation and maintenance of their respective systems in accordance with an approved Management, Operations, and Maintenance program and HRSD would assume responsibility for developing, financing, and implementing the RWWMP in the Regional Sanitary Sewer System;

WHEREAS, upon the completion of the RWWMP implementation, HRSD agreed to assume the Localities’ regulatory liability for any wet weather overflows that are determined to result from lack of adequate capacity as defined in the approved RWWMP;

WHEREAS, HRSD is presently undertaking the Sustainable Water Initiative for Tomorrow (“SWIFT”) project, which entails treating water that would otherwise be discharged to the Chesapeake Bay watershed to drinking water standards and adding it to the Potomac aquifer, thereby providing important human health and environment benefits to the region, including reducing the amounts of nutrients and sediment discharged to the Chesapeake Bay, replenishing the region’s stressed groundwater supplies, and slowing or reversing land subsidence related to aquifer compaction;

WHEREAS, on February 21, 2017, the Federal Consent Decree was amended to authorize HRSD to incorporate integrated planning elements in the RWWMP that allow for the prioritization of the SWIFT project over wet weather capacity projects provided that doing so will provide greater human health or environmental benefits to the region;

WHEREAS, on September 29, 2017, HRSD submitted an RWWMP to the U.S. Environmental Protection Agency (“EPA”) and Virginia Department of Environmental Protection (“DEQ”), which prioritizes the implementation of the SWIFT project, in concert with certain high priority wet weather capacity projects, and, consistent with prudent adaptive management principles, reserves the development of a plan for any additional wet weather capacity actions that may be necessary for a Final Measures Plan to be submitted to EPA and DEQ in 2030;

WHEREAS, HRSD and the Localities desire to amend the Agreement to better conform to the RWWMP dated September 29, 2017 by accelerating the date HRSD will assume regulatory liability for wet weather overflows from the Regional Sanitary Sewer System and reaffirming the Localities' continuing obligation to properly maintain their respective systems.

NOW, THEREFORE, pursuant to Section D.1 of the Agreement, HRSD and the Localities do hereby agree to amend the Agreement as follows.

A. REVISIONS TO THE AGREEMENT

1. The following definition is inserted in Section A:

“Wet Weather Overflows” means capacity-related overflows from the Regional Sanitary Sewer System that result from unusually high flows caused by infiltration and/or inflow and not attributed to mechanical or electrical failure, third-party damage, extreme weather events, or similar conditions beyond the hydraulic capacity of the Regional Sanitary Sewer System. Capacity-related overflows specifically exclude those caused in whole or in part by build-ups of debris, sediment, and/or grease that reduce the hydraulic capacity of the system and that can be mitigated through proper operations and maintenance of the system.

2. Subsections e., m., and n. of Section B.1 are amended as follows:

e. Upon approval by the United States District Court for the Eastern District of Virginia (the “Court”) of an amendment to the Federal Consent Decree to adopt the RWWMP approved by EPA and DEQ ~~EPA full implementation of the applicable RWWMP facilities for each HRSD treatment plant service area and the successful completion of the Post-RWWMP Performance Assessment for that service area, HRSD shall be responsible for wet weather capacity for those portions of the Regional Sanitary Sewer System in that service area, whether owned or operated by HRSD or a Locality, as further specified in this Section B.1 up to the applicable capacity level defined in the approved RWWMP;~~

....

m. Assume regulatory liability for Wet Weather Overflows occurring within the Regional Sewer System following approval by the Court ~~completion of the RWWMP implementation (including the Post-RWWMP Implementation Performance Assessment) and which are determined to result from lack of adequate capacity as defined in the RWWMP for such sanitary sewer overflows;~~

n. Reimburse, to the extent permitted by law, any Locality for reasonable claims paid to any third party resulting from Wet Weather Overflows occurring

~~on or after the date of the approval of the RWWMP by the Court upon completion of the RWWMP implementation (including the Post RWWMP Implementation Performance Assessment) and which are determined to result from lack of adequate capacity as defined in the RWWMP for such sanitary sewer overflows, provided that HRSD retains the right to assert governmental immunity and/or other applicable defenses as allowed by law if HRSD determines a claim is unreasonable or due to causes beyond HRSD's control;~~

3. The following subsection k. is added to the end of Section B.2:

k. Refrain from requesting or petitioning the Board or DEQ to terminate the Special Order By Consent (December 19, 2014) in accordance with Section E.12 of the same, or consenting to a modification of the Special Order By Consent that eliminates or materially alters the Locality's obligation to implement a Management, Operations, and Maintenance program in accordance with Section D of the same, unless prior written consent to such termination or modification is provided by HRSD.

B. MISCELLANEOUS PROVISIONS

1. Effective Date for this First Amendment. This amendment shall become effective as of the date (1) all Parties provide written assent to this First Amendment and (2) the Court approves an amendment to the Federal Consent Decree that adopts the RWWMP approved by EPA and DEQ, whichever occurs later.

2. Rescission of this First Amendment. It is an express assumption and condition of this First Amendment that the RWWMP submitted by HRSD on September 29, 2017 will be approved by EPA and DEQ and will be incorporated into the Federal Consent Decree through an amendment approved by the Court. If (1) HRSD is compelled by action of EPA, DEQ, and/or the Court to submit a revised RWWMP that is materially different from the RWWMP dated September 29, 2017, and such revised RWWMP is thereafter approved by the Court or (2) the Court imposes an alternate RWWMP on HRSD, HRSD may, at its discretion, notify all Localities in writing within thirty (30) days of such approval/imposition of a materially different RWWMP. Provided such notification states HRSD's intent to rescind the First Amendment in accordance with this section, it will have the effect of rescinding this First Amendment in its entirety. In that case, the Agreement will continue in effect as if this First Amendment were never executed.

3. Remainder of Agreement Unaffected. Except as stated in Section A of this First Amendment, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties express their assent to this First Amendment by the signatures of their duly authorized officials as of the dates next to their respective signatures as shown below.


[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Party has caused this Agreement to be executed by their duly authorized officials as shown below.

HRSD

By: 
Edward G. Henlfin, P.E.

Date: 4/12/2018

Attest: 



BOBBI SUZANNE HERMANS
NOTARY PUBLIC - Reg. #7684327
COMMONWEALTH OF VIRGINIA

COMMISSION EXPIRES NOVEMBER 30, 2020

(ELECTRONIC SIGNATURES OF ALL PARTIES TO THE AGREEMENT WILL BE CONSOLIDATED ON THIS PAGE IN THE FINAL DOCUMENT)

LIST OF SIGNATORIES

CITY OF CHESAPEAKE

GLOUCESTER COUNTY

CITY OF HAMPTON

ISLE OF WIGHT COUNTY

JAMES CITY COUNTY

CITY OF NEWPORT NEWS

CITY OF NORFOLK

CITY OF POQUOSON

CITY OF PORTSMOUTH

CITY OF SUFFOLK

CITY OF VIRGINIA BEACH

CITY OF WILLIAMSBURG

YORK COUNTY

TOWN OF SMITHFIELD

HAMPTON ROADS SANITATION DISTRICT

This listing of participants is followed by the signature page to be completed by each party.

IN WITNESS WHEREOF, the Party has caused this Agreement to be executed by their duly authorized officials as shown below.

By: Way B. Bunting
City Manager / Authorized Designee

Date: 10/16/18

Locality: City of Hampton

Date: 10/16/18

Attest: [Signature]
Clerk of Court
Council

CITY OF HAMPTON
OFFICE OF THE CITY ATTORNEY
Approved as to form and legal sufficiency
Date: 10.10.2018
[Signature]
DEPUTY City Attorney

