

Appendix G2 - Assessment of Controls (Watershed Assessment Monitoring)

MOU FOR THE WATERSHED ASSESSMENT MONITORING

POOLED MONITORING

Chesapeake Bay Trust – Harford County, Maryland Cooperative Agreement

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“The Agreement”), entered into this 7 day of
November, 2023, by and between the

HARFORD COUNTY, MARYLAND

212 SOUTH BOND STREET, 1ST FLOOR

ANNAPOLIS, MARYLAND 21401

(A Body Corporate and Politic, “Harford County”)

And

CHESAPEAKE BAY TRUST

108 SEVERN AVENUE

ANNAPOLIS, MARYLAND 21403

(“The Trust”)

WHEREAS, Harford County and the Trust share a common interest in conducting watershed assessments and evaluating long-term water quality trends within Harford County's boundaries.

WHEREAS, Harford County has opted into the Pooled Monitoring program as described in the *Assessment of Controls - Watershed Assessment Monitoring* section of Harford County's National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit, for the specific Biological and Chloride monitoring requirements.

WHEREAS, the Trust administers the Pooled Monitoring Program to conduct watershed assessments and evaluate long-term water quality trends throughout Maryland.

WHEREAS, the Trust, a nonprofit entity established by the Maryland General Assembly in 1985 to promote public awareness and participation in the restoration and protection of the water quality, aquatic and land resources of the Chesapeake Bay, and other aquatic and land resources of the State, is authorized to contract with other units of government, including Harford County; and

WHEREAS, the Trust has a governance and oversight structure with formal representation from the local government, State natural resource agencies, and the Maryland General Assembly, and uses independent technical review committees to review proposals and recommend awards made through its competitive award programs; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. SCOPE OF WORK

The Trust administers the Pooled Monitoring Program as described in the *Assessment of Controls* section of Harford County's MS4 permit, which is incorporated herein by reference. The goal of the Pooled Monitoring program is to align monitoring and other resources from multiple sources to rigorously and effectively conduct watershed assessments and evaluate long-term water quality trends and address other key issues pertaining to watershed restoration and watershed assessment. The specific questions to be addressed in each program cycle are determined by the Pooled Monitoring Advisory Committee (PMAC), on which Harford County will have one (1) seat as per the PMAC charter (Attachment A to this agreement, which is expressly incorporated herein and made part of this Agreement).

Solicitation of proposals to conduct watershed assessment monitoring, monitoring to evaluate long-term water quality trends, and address other watershed restoration and assessment are posed via open, competitive, publicized Requests for Proposals for each program cycle by the Trust, in consultation with the Pooled Monitoring Advisory Committee (PMAC). The Trust uses an external peer review process to review proposals, and reviews are discussed, and proposals recommended for funding to the Trust board by the PMAC. The Trust, in consultation with the PMAC, manages subsequent awards, and works with the PMAC to interpret and present results for and to various stakeholder audiences.

ARTICLE II. CONSIDERATION AND METHOD OF PAYMENT

Harford County has opted to participate in the Pooled Monitoring Program option for MS4 permit required Watershed Assessment Monitoring as described in the *Assessment of Controls* section of Harford County's MS4 permit at a funding level of One hundred seventy-four thousand one hundred dollars (\$174,100) per year (\$166,000 for Biological Monitoring and \$8,100 for Chloride Monitoring) for the remainder of the MS4 permit term as determined by the Maryland Department of the Environment (the Department), the regulatory entity governing compliance with the monitoring section of the MS4 permits.

Harford County may provide additional funds to the Trust upon written agreement by both parties.

Harford County shall provide the annual amount identified above to the Trust by July 1 of each year for the duration of this Agreement. The Trust shall place the award funds in an account to be used solely for administering the Pooled Monitoring Program.

All financial obligations imposed on Harford County by this Agreement and any renewals thereof beyond the current County fiscal year (FY24) are subject to appropriation and availability of funds by the Harford County Council (Council). Should the Council not appropriate sufficient funds to meet Harford County's obligations under this Agreement, the Agreement shall automatically terminate at the end of the last fiscal year for which sufficient funds were appropriated.

To accomplish the Scope of Work and manage the Program, an amount not to exceed five percent (5%) may be allocated by the Trust to administrative expenses. Copies of financial and programmatic reports prepared by the Trust for the Pooled Monitoring Advisory Committee and

Maryland Department of the Environment will be submitted to Harford County quarterly for quarters ending September 30, December 30, March 31, and July 31 of each year.

The Trust agrees to follow a cost accounting practice, which is in accordance with the standards, principles, and procedures in the Code of Maryland Regulation (COMAR) 21.09 and uniform accounting practices of the profession, as acceptable to Harford County.

ARTICLE III. TERM AND RENEWAL

The Agreement Period shall be from September 1, 2023, through August 31, 2027. The agreement shall be renewable for additional terms of five (5) years upon written agreement by both parties. This agreement can be extended on an annual basis if the County's MS4 permit is administratively continued until a new permit becomes effective. Any portion of the initial term beyond the current Harford County fiscal year (FY24), and any renewal term, shall be subject to appropriation and availability of funds by the Harford County Council as set forth in Article II of this Agreement.

ARTICLE IV. AGREEMENT REPRESENTATIVES

The following individuals shall have authority to act under this Agreement for their respective parties:

Harford County: Harford County, Maryland
 Robert G. Cassilly
 County Executive
 410-638-3350
 countyexecutive@harfordcountymd.gov

Trust: Jana Davis, Ph.D.
 President
 Chesapeake Bay Trust
 410-974-2941 x100
 jdavis@cbtrust.org

ARTICLE V. KEY PERSONNEL

The parties agree that the following named individuals are considered to be essential to the work being performed hereunder and are designated as key personnel who shall be made available to the full extent required to carry out the work under this Agreement:

Harford County: Michele Dobson
Watershed Protection and Restoration
Harford County Department of Public Works
410-638-3217 ext. 1247
mgdobson@harfordcountymd.gov

Trust: Sadie Drescher
Vice President of Programs for Restoration
Chesapeake Bay Trust
410-974-2941 x105
sdrescher@cbtrust.org

Should these individuals become unavailable during the period of performance, personnel of equivalent capability shall be assigned to complete the work related to this Agreement. Any such substitutions shall require prior written approval by Harford County, of which approval may be denied by Harford County at its sole discretion. Should the Trust be unable to provide substitutes acceptable to Harford County, Harford County may terminate this Agreement, or at its option, negotiate with the Trust for an acceptable modification in the work and/or payment under the Agreement relative to the loss of such key personnel.

ARTICLE VI. MERGER

This Agreement, all exhibits, and approved modifications hereto (hereinafter referred to collectively as "Agreement Documents"), embody the entire agreement of the parties. There are no promises, terms, conditions, or obligations referring to the subject matter, other than those

contained herein or incorporated herein by reference. The Trust's performance of any work under the Agreement constitutes the Trust's acceptance of all of the Agreement Documents.

ARTICLE VII. AMENDMENT

Only a writing executed by both parties may amend this Agreement.

ARTICLE VIII. GOVERNING LAW

This Agreement shall be governed by and construed under the laws of the State of Maryland.

ARTICLE IX. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement shall be construed to: (1) provide a benefit to any third party; (2) operate in any way as a promise, covenant, warranty, or other assurance to any third party; or (3) create any obligation to any third party.

ARTICLE X. INDEMNIFICATION

The Trust shall indemnify, defend, and hold harmless Harford County, its officers, directors, agents and employees (each, including Harford County, a "Covered Person") from and against any and all pending or threatened claims, losses, liabilities, litigation, damage, penalty, expense and demands of every kind and nature whatsoever (any of the foregoing a "Loss"), including, without limitation, the costs as and when incurred of defending any such Loss, and including, without limitation, reasonable attorneys' fees and disbursements therefore, incurred by a Covered Person resulting from or arising in connection with the performance of this Agreement, caused in part or in whole by any negligent or willful act or omission of the Trust, its officers, agents, employees or representatives. The Trust expressly understands and agrees that any performance bond or insurance protection required by this Agreement or otherwise provided shall in no way limit the responsibility to indemnify, keep and save harmless and defend Harford County as herein provided. Harford County does not waive any right or defense, or forebear any action, in connection herewith.

ARTICLE XI. ACCOUNTING

Retention of Records. The Trust shall retain and maintain all records and documents relating to this Agreement for three (3) years after final payment or any applicable statute of limitations, whichever is longer. Records and documents relating to this Agreement shall include, but not be limited to, the Request for Proposals, received proposals, proposal reviews, documents related to the selection of the proposals to fund, and all documentation prepared by or for the Awardees.

Audit. The Trust shall make available for inspection all records and documents relating to this Agreement upon request of Harford County. All records and documents relating to this Agreement are subject to audit by Harford County or an authorized representative of Harford County. The Trust shall promptly award access to its facilities to authorized Harford County representative(s) for review of documents, information and interviews of Trust personnel. The Trust will provide to Harford County upon request copies of any invoices, records, timesheets, work logs, contracts, or any other documents or information needed in order for Harford County to comply with State or federal reporting and audit requirements.

Payment. Payments to the Trust shall be made in accordance with the terms of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by causing the same to be signed by their duly authorized representatives on the day and year first above written.

HARFORD COUNTY, MARYLAND

Kathy Stewart
WITNESS

Robert G. Cassilly
By: Robert G. Cassilly
Harford County Executive
Date: 11/7/23

APPROVED FOR LEGAL FORM AND
SUFFICIENCY

Margaret K. Hartka
Margaret K. Hartka
Deputy County Attorney
Date: 11/1/23

DEPARTMENT OF PUBLIC WORKS

Joseph J. Siemek
Joseph J. Siemek, P.E.
Director of Public Works
Date: 11-3-23

CHESAPEAKE BAY TRUST

Sadie Drescher
Sadie Drescher
10/31/23

WITNESS

Jana Davis
Jana Davis, PhD.
President
Chesapeake Bay Trust
Date: 10/31/23

ATTACHMENT A

**CHESAPEAKE BAY TRUST - HARFORD COUNTY, MARYLAND
COOPERATIVE AGREEMENT AND**

Chesapeake Bay Trust Pooled Monitoring Program (PMP)

INTRODUCTION

The Pooled Monitoring Program (PMP) will focus on answering key questions pertaining to the cumulative impacts of watershed restoration activities and the effectiveness of specific restoration practices posed by the regulatory, regulated, scientific, and practitioner communities using robust and rigorous methods.

Two tenets of the Pooled Monitoring Program are as follows:

All data are collected with a specific question or hypothesis in mind

Research products identify a clear path to integrate the new information into the regulatory process and make it accessible to regulators.

PROCESS

There is a Pooled Monitoring Advisory Committee (PMAC) whose membership generally includes:

Six members from the regulatory community (U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Oceanic Atmospheric Administration, Maryland Department of the Environment, Maryland Department of Natural Resources)

1 member from the practitioner community

At least 3 members from the MS4 Phase I permittee community. Any MS4 permittee who contributes funds would be a member.

1 member from the environmental community

2 non-voting members of the scientific community who are experts in experimental design and restoration evaluation.

MS4 Permittees who opt into the Pooled Monitoring Program agree with MDE on level of opt-in funding commitment and generate MOUs with the Chesapeake Bay Trust, which manages the Pooled Monitoring Program.

The Chesapeake Bay Trust and PMAC members maintain a list of key questions about certain kinds of restoration projects as well as a minimum research protocol. The PMAC active membership changes from time to time.

The PMAC meets in the fall of each year to review and prioritize key questions.

Questions are compiled into an RFP that lists the prioritized questions and minimum/preferred methodology. The RFP includes an outreach/dissemination requirement in the scope of work. The RFP is bid out to any type of entity that can address one or more questions and can include bids to conduct new research or to analyze existing data. Bidding entities could include, but are not limited to, academic institutions, consulting firms, scientifically capable watershed organizations. Existing research/monitoring programs would be eligible to bid. As part of the RFP, resources, such as lists of completed restoration projects or permitted projects not yet constructed, would be made available. Bidders would be allowed to use these projects in their research.

Bids/proposals must identify:

- The question being addressed/answered
- The methodology being used to address (including sample size, location, timing, etc.)
- The analysis proposed
- The final product

The interpretation of the results/dissemination plan, i.e. presentation of the results into a form usable by regulatory and practitioner communities.

The Trust, under guidance of PMAC, composes a Technical Review Committee (TRC) that evaluates proposals and recommends projects for funding. The TRC is composed of external technical peer reviewers who have expertise in the topics of the proposals submitted and are not involved in any proposals submitted. The TRC will evaluate proposals using criteria to include:

- Relevance of the project and question posed
- Quality of the methods and analysis proposed
- Qualifications of leads and of the organization
- Communication/dissemination plan

PMAC may recommend that Advisory Groups are established to oversee certain projects.

The research is undertaken and completed; reports are sent to PMAC for review. A subset of projects may be sent for external peer review prior to acceptance of final product or dissemination to the public/community.

Results are disseminated to the practitioner community through, at a minimum:

An annual forum to which regulatory audiences are invited/required by their agencies to attend

Other forums as appropriate.

Results are interpreted for the regulatory audiences, and recommendations are prepared for how regulators can integrate the new information into their processes and policies. Some program funds may be used to develop key tools that facilitate use of the results.

The Trust archives reports, synthesized data, and raw data for public use.