

# **MOU FOR THE BMP EFFECTIVENESS POOLED MONITORING**

Chesapeake Bay Trust – Anne Arundel County, Maryland Cooperative Agreement

## **COOPERATIVE AGREEMENT**

THIS COOPERATIVE AGREEMENT (“The Agreement”), entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between

ANNE ARUNDEL COUNTY, MARYLAND

2662 RIVA ROAD

ANNAPOLIS, MARYLAND 21401

(A Body Corporate and Politic, “Anne Arundel County”)

And

CHESAPEAKE BAY TRUST

108 Severn Ave

ANNAPOLIS, MARYLAND 21403

(“The Trust”)

WHEREAS, Anne Arundel County and the Trust share a common interest in improvement of water quality in Anne Arundel County's tributaries and advancing the community's understanding and improvement of methods by which to do so.

WHEREAS, Anne Arundel County has opted into the Pooled Monitoring program as described in the *Assessment of Controls - BMP Effectiveness Monitoring* section of Anne Arundel County's National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit.

WHEREAS, the Trust administers the Pooled Monitoring Program to answer key restoration questions pertaining to cumulative impacts of watershed restoration activities and the effectiveness of specific restoration practices using robust and rigorous methods.

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 Anne Arundel 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 Anne Arundel County's MS4 permit. The goal of the Pooled Monitoring program is to align monitoring and other resources from multiple sources to rigorously and effectively answer key questions about efficacy of watershed restoration projects, impact of restoration projects, ability to detect water quality signals from restoration projects or suites of projects (at either the project or catchment scale), and other similar questions. The specific questions to be addressed in

each program cycle are determined by the Pooled Monitoring Advisory Committee (PMAC), on which Anne Arundel 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).

Questions are posed via open, competitive, publicized Requests for Proposals for each program cycle by the Trust, in consultation with the 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**

Anne Arundel County has opted to participate in the Pooled Monitoring Program option for MS4 monitoring as described in the *Assessment of Controls* section of Anne Arundel County's MS4 permit at a funding level of One hundred thousand dollars (\$100,000) per year 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.

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

Anne Arundel County shall provide the annual amount identified above to the Trust by August 15 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 Anne Arundel County by this Agreement and any renewals thereof beyond the current County fiscal year (FY21) are subject to appropriation and availability of funds by the Anne Arundel County Council (Council). Should the Council not appropriate sufficient funds to meet Anne Arundel 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 Anne Arundel 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 Code of Maryland Regulation (COMAR) 21.09 and uniform accounting practices of the profession, as acceptable to Anne Arundel County.

### **ARTICLE III. TERM AND RENEWAL**

The Agreement Period shall be from January 1, 2021, through June 30, 2026. The agreement shall be renewable for additional terms of five (5) years upon written agreement by both parties. Any portion of the initial term beyond the current Anne Arundel County fiscal year (FY21), and any renewal term, shall be subject to appropriation and availability of funds by the Anne Arundel 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:

Anne Arundel County: Erik Michelsen

Deputy Director

Bureau of Watershed Protection & Restoration

Department of Public Works

(410) 222-7520

[pwmich20@aacounty.org](mailto:pwmich20@aacounty.org)

Trust: Jana Davis, Ph.D.

Executive Director

Chesapeake Bay Trust

410-974-2941 x100

[jdavis@cbtrust.org](mailto: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:

Anne Arundel County: Janis Markusic

Bureau of Watershed Protection & Restoration

Department of Public Works

(410) 222-0551

[pwmark02@aacounty.org](mailto:pwmark02@aacounty.org)

Trust: Sadie Drescher

Director, Restoration Programs

Chesapeake Bay Trust

410-974-2941 x105

[sdrescher@cbtrust.org](mailto: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 Anne Arundel County, which approval may be denied by Anne Arundel County at its sole discretion, but shall not be unreasonably denied. Should the Trust be unable to provide substitutes acceptable to Anne Arundel County, Anne Arundel 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 Anne Arundel County, its officers, directors, agents and employees (each, including Anne Arundel 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 Anne Arundel County as herein provided. Anne Arundel 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 Anne Arundel County. All records and documents relating to this Agreement are subject to audit by Anne Arundel County or an authorized representative of Anne Arundel County. The Trust shall promptly award access to its facilities to authorized Anne Arundel County representative(s) for review of documents, information and interviews of Trust personnel. The Trust will provide to Anne Arundel County upon request copies of any invoices, records, timesheets, work logs, contracts, or any other documents or information needed in order for Anne Arundel 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.

**ANNE ARUNDEL COUNTY, MARYLAND**

DocuSigned by:

*Matt Power*

By: 85B4D2942CF3481... (SEAL)  
MATTHEW J. POWER  
Chief Administrative Officer

APPROVED FOR LEGAL FORM AND SUFFICIENCY  
ANNE ARUNDEL COUNTY, MARYLAND  
GREGORY J. SWAIN, COUNTY ATTORNEY

DocuSigned by:

*Jason E. Fetterman*

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Jason E. Fetterman  
Senior Assistant County Attorney

APPROVED FOR FUNDS:

DocuSigned by:

*Karin McQuade FY21*

C09022C105334CB...  
Karin McQuade, Controller  
Anne Arundel County, Maryland

DEPARTMENT OF PUBLIC WORKS

DocuSigned by:

*Erik Michelsen*

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Erik Michelsen  
Deputy Director  
Bureau of Watershed Protection and Restoration  
Anne Arundel County, Maryland



**CHESAPEAKE BAY TRUST**

 11/30/20

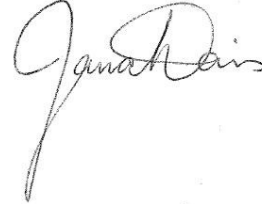
WITNESS

Date: 11/30/20

Jana Davis, Ph.D.

Executive Director

Chesapeake Bay Trust



ATTACHMENT A

**CHESAPEAKE BAY TRUST - ANNE ARUNDEL 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.