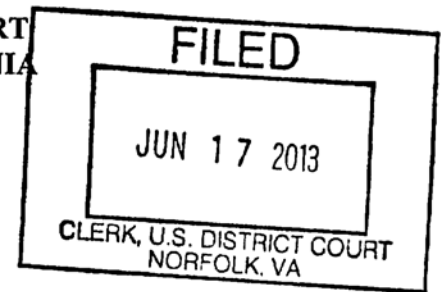


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



UNITED STATES OF AMERICA and)
)
COMMONWEALTH OF VIRGINIA,)
)
Plaintiffs,)
)
)
v.)
)
)
HAMPTON ROADS SANITATION)
DISTRICT,)
)
Defendant.)
_____)

Civil Action No. 2:09-cv-481

SECOND AMENDMENT TO CONSENT DECREE
Background

WHEREAS, on February 23, 2010, the Court entered a Consent Decree in the above-captioned matter; and

WHEREAS, unless otherwise defined, all terms used herein shall have the meanings assigned to them in, or as provided by, the Consent Decree; and

WHEREAS, the Parties modified the Consent Decree pursuant to that Consent Decree Modification Number One, a copy of which is attached hereto as Attachment A, dated May 25, 2011, pursuant to Section XXIX (Modification), Paragraph 166 of the Consent Decree, which provides that non-material terms of the Consent Decree may be modified by written agreement that is signed by all Parties without approval by the Court; and

WHEREAS, HRSD and the Localities desire to evaluate the potential regionalization and consolidation of the Localities' sewage collection systems through transfer of control and assets to HRSD; and

WHEREAS, there may be significant benefits of regionalization conferred upon HRSD, the Localities, and the citizens served by HRSD, as well as potential benefits to the Plaintiffs in dealing with a single entity that owns and operates the region's sewage conveyance system, as opposed to multiple entities operating distinct systems; and

WHEREAS, regionalization will significantly affect how the RWWMP is developed; and

WHEREAS, in order to allow HRSD and the Localities to study the potential benefits of regionalization, HRSD has requested that the Plaintiffs agree to defer the submission date for the RWWMP so that HRSD will have the time and manpower to participate in a regionalization study; and

WHEREAS, as an initial step to facilitate moving forward with the regionalization study, pursuant to Section XXIX (Modification), Paragraph 167 of the Consent Decree, the Parties have agreed to an initial extension of the RWWMP submission deadline from November 26, 2013 to July 31, 2014, as more particularly set forth in that First Stipulation of the Parties to Modify the Consent Decree, agreed to by the Parties and filed with the Court on January 24, 2013; and

WHEREAS, in further support of the regionalization initiative, and pursuant to Section XXIX (Modification), Paragraph 169 of the Consent Decree, the Parties and the Localities have consulted regarding the issue of regionalization of the region's sewer conveyance system; and

WHEREAS, HRSD has provided funding to a consulting team to perform a regionalization study; and

WHEREAS, the Parties have developed an approach that will ensure reasonable further progress toward the goal of eliminating sanitary sewer overflows during the regionalization study period while preserving HRSD's management and consulting resources so that it can participate in the regionalization study;

NOW, THEREFORE, for good cause show, the Parties hereby seek to modify the Consent Decree to ensure reasonable further progress toward the goal of eliminating sanitary sewer overflows while facilitating the regionalization study and, accordingly, move that the Court sign and enter the following Consent Decree Amendment. :

Definitions:

HRSD SS System: Add to the existing definition a new sentence: "The HRSD SS System also shall include all sanitary sewer systems previously owned by a Locality over which HRSD acquires control and ownership pursuant to the Regionalization effort set forth in Section XI, effective from the date of such acquisition of control and ownership."

Regionalization: Add definition of Regionalization: "Regionalization" shall mean the consolidation of sanitary sewer collection systems owned and operated by most or all of the Localities, through the transfer of operational control and assets to HRSD.

1. Replace Section XI (Regional Wet Weather Management Plan), subsection B., Paragraph 40 with the following:

“B. Regionalization Study; Submission of Regional Wet Weather Management Plan.

40. **Regional Efforts.** The Parties agree to add additional time to evaluate, and, if appropriate, to implement Regionalization of the Hampton Roads regions’ sewer collection lines and assets before HRSD and the Localities develop and submit a RWWMP to address wet weather-related SSOs, Backups, Bypasses, Prohibited Bypasses and unauthorized discharges.

a. **Regionalization Study.** HRSD, in consultation with the Localities, has initiated a study of the potential advantages and disadvantages of Regionalization (the “Regionalization Study”).

- (1) The Regionalization Study report shall, at minimum, include:
 - i. A comparative analysis of the scope and costs of 1) wet weather solutions under the current framework of separate control of Locality systems and the HRSD SS System and 2) wet weather solutions under a framework in which the entire Regional SS System is under the ownership and control of HRSD. The comparative analysis will be performed at both the 2-year and 10-year Levels of Service;
 - ii. A comparative analysis of the scope and costs of operation and maintenance practices and infrastructure investment under 1) the current framework of separate control of Locality systems and the HRSD SS System, and 2) a framework in which the entire Regional SS System is under the ownership and control of HRSD; and
 - iii. Final recommendations regarding Regionalization.
- (2) HRSD shall complete the Regionalization Study and submit a Regionalization Study report to Plaintiffs no later than August 31, 2013.
- (3) HRSD, in consultation with the Localities, shall determine whether to implement Regionalization and provide notification of such to Plaintiffs by February 28, 2014. The notification to Plaintiffs shall specify the individual decision from each Locality and from HRSD.
- (4) If Regionalization implementation is approved by HRSD and most or all of the Localities, HRSD shall complete transfer of assets and operational control of assets that are being consolidated under HRSD and provide notification of such to Plaintiffs by February 28, 2015. Plaintiffs may agree to extend this date up to six months without public comment or court approval. If this date is extended, the extension will not affect the RWWMP submission date identified in Paragraph 40(c) below.

- b. RWWMP. HRSD, in consultation with the Localities, shall develop and submit for EPA and VADEQ review and approval pursuant to Section XVIII (Submission for Review and Approval) a RWWMP with specific measures and schedules that, when implemented, will result in Adequate Capacity in the STPs and the Specified Portions of the Regional SS System. At a minimum, the STPs must be able to accommodate, without Prohibited Bypasses or unauthorized discharges, the peak hourly flow received by the STP. The scope of review and approval of the RWWMP, and any limitations on Plaintiffs' review and approval of the Localities' obligations set forth in the RWWMP, is set forth in Subsection E below.
- (1) If the Regionalization Study report that is completed by August 31, 2013 does not recommend Regionalization, HRSD, in consultation with the Localities, shall develop and submit a RWWMP for Plaintiff's review and approval on or before April 30, 2015.
 - (2) If, on or before February 28, 2014, Regionalization implementation is not approved by HRSD and most or all of the Localities, HRSD, in consultation with the Localities, shall develop and submit a RWWMP for Plaintiffs' review and approval on or before October 1, 2015.
 - (3) If, on or before February 28, 2014, Regionalization implementation is approved by HRSD and most or all of the Localities, HRSD (on behalf of itself and its newly regionalized partners), in consultation with any and all Localities that are not implementing Regionalization and are retaining responsibility for sanitary sewer system ownership, shall develop and submit a RWWMP for Plaintiff's review and approval on or before October 1, 2016. HRSD is responsible in the RWWMP for any and all sanitary sewer systems previously owned by a Locality over which HRSD acquires ownership pursuant to the Regionalization effort.
- c. Reporting. HRSD shall provide the Plaintiffs and the Court with written status reports detailing the progress of the Regionalization Study and implementation starting with the 180-day period ending December 31, 2012, and each 180-day period thereafter through date of submittal of the RWWMP. Such reports shall be submitted with the reports required in Paragraphs 87 and 88 of this Consent Decree. The reports shall include: progress of Regionalization Study, summary of major meetings and other significant informational exchanges with Localities, issues identified and other pertinent information necessary to convey the status of the evaluations and comparative analyses. HRSD also shall report on the status of the Regionalization Study and implementation as part of the quarterly briefings required under Section XVII.
- d. Effect of Regionalization. No later than October 1, 2018, HRSD shall submit an updated MOM Plan, consistent with Paragraph 33, for Plaintiffs' review and

approval that addresses any and all Locality sanitary sewer systems over which HRSD acquires ownership and control pursuant to the Regionalization effort. The updated MOM Plan shall also update the quantitative performance measures identified in Paragraph 34.

3. Add to Section XI (Regional Wet Weather Management Plan), Paragraph 55, the following sentence:

“HRSD is responsible in the RWWMP for all sanitary sewer systems previously owned by a Locality over which HRSD acquires ownership and control pursuant to the Regionalization effort set forth in Paragraph 40 above from the date that HRSD acquires ownership and control.”

2. Add a new sentence to the end of Section XXI (Force Majeure), Paragraph 130, as follows:

“HRSD agrees that it will not assert a force majeure defense with respect to the Regionalization Study or RWWMP development and submittal deadlines provided in Paragraph 40.”

3. Add the following infrastructure renewal and improvement projects to the list in Appendix 5:

CIP No.	Project Name	Est. Cost
AT-125	Great Neck Road Interceptor Force Main Replacement Section A	\$4,500,000
AT-128	Military Highway Interim Pressure Reducing Station	\$750,000
BH-120	Hampton Trunk Sewer Extension Division E Gravity Replacement	\$750,000
BH-131	Victoria Boulevard Pump Station	\$3,600,000
BH-145	Ivy Home-Shell Road Sewer Extension Division I Replacement	\$1,500,000
GN-139	South Shore Interceptors Air Vent Rehabilitation	\$2,500,000
GN-142	North Shore Air Vent Replacements	\$1,200,000
JR-101	Center Avenue Pump Station Service Area I/I Remediation	\$4,000,000
JR-110	Middle Ground Boulevard – City Center Interconnect Force Main	\$5,000,000
JR-115	Center Ave I&I Remediation Phase II	\$3,000,000
JR-117-1	Jefferson Avenue Interceptor Force Main Replacement Phase I	\$4,500,000
JR-120	Warwick 36” PCCP – Scufflefield to Nettles Interceptor Force Main Replacement	\$5,000,000
NP-118	Holland Road 24” Interceptor Force Main – Section A	\$14,000,000
NP-122	Pughsville Pressure Reducing Station Upgrades	\$5,000,000
VIP-115	Sewerage System Improvements Division C, Phase I and Suction Lines Jefferson Street/Camden/Peachtree Portsmouth VA Replacements (I-264 Crossing)	\$750,000
VIP-164	Lafayette River Crossing / Norview – Estabrook Force Main Replacement	\$3,000,000

AT-116-1	Courthouse Interim Pressure Reducing Station	\$1,500,000
YR-123	Hampton Pump Station 023 Upgrades and Discharge Force Main	\$750,000

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IT IS SO ORDERED.


Norfolk, Virginia, 2013


Arenda L. Wright Allen
United States District Judge

Hon. Arenda L. Wright Allen
United States District Judge

FOR PLAINTIFF UNITED STATES OF AMERICA:



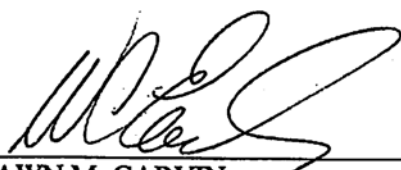
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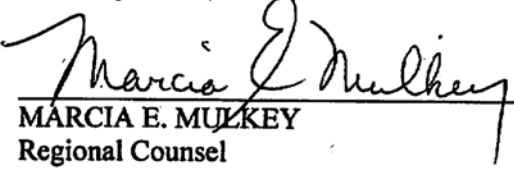
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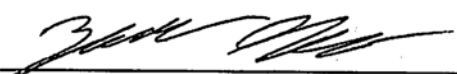
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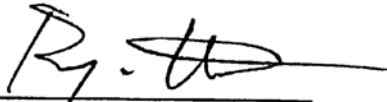
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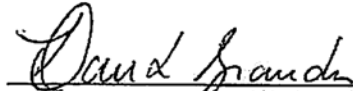
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FOR PLAINTIFF COMMONWEALTH OF VIRGINIA

KENNETH T. CUCCINELLI, II
Attorney General

A handwritten signature in cursive script, reading "David C. Grandis", is positioned above a horizontal line.

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[END OF SIGNATURE PAGES]