

Board of Supervisors
County of Prince George, Virginia

Resolution

At a regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia, this 10th day of December, 2019:

Present:

Donald Hunter, Chairman
Floyd M. Brown, Jr., Vice-Chair
Alan R. Carmichael
Marlene J. Waymack
T. J. Webb

Vote:

C-3

On motion of _____, seconded by _____, which carried unanimously, the following Resolution was adopted:

RESOLUTION; OPERATING AGREEMENT BETWEEN PRINCE GEORGE
COUNTY POLICE DEPARTMENT AND THE VIRGINIA PORT AUTHORITY

NOW, THEREFORE, BE IT RESOLVED, That the Board of Supervisors of the County of Prince George this 10th day of December, 2019 does hereby authorize the Chief of Police to execute the Virginia Port Authority Maritime Incident Response Team Operating Agreement between Prince George County Police Department and the Virginia Port Authority.

A Copy Teste:

Percy C. Ashcraft
County Administrator

VIRGINIA PORT AUTHORITY
MARITIME INCIDENT RESPONSE TEAM
OPERATING AGREEMENT

This Operating Agreement is entered into this ____ day of _____, _____ (hereinafter, the “Effective Date”), by and between the Virginia Port Authority and the following localities, state agencies, and federal agencies:

The City of Chesapeake, Virginia

The City of Virginia Beach, Virginia

The City of Norfolk, Virginia

The City of Portsmouth, Virginia

The City of Suffolk, Virginia

The County of Surry, Virginia

The County of Isle of Wight, Virginia

The City of Hampton, Virginia

The City of Newport News, Virginia

The County of York, Virginia

The City of Poquoson, Virginia

The County of James City, Virginia

The City of Hopewell, Virginia

The County of Henrico, Virginia

The City of Richmond, Virginia

The County of Chesterfield, Virginia

The County of Northampton, Virginia

The County of Accomack, Virginia
Fredrick County Sheriff Office, Fredrick County Virginia
Department of Game and Inland Fisheries, Virginia
Virginia Marine Police, Virginia
Virginia State Police, Virginia
United States Navy, Naval Region Mid-Atlantic
The County of Prince George, Virginia

RECITALS

Whereas, there exists within the Commonwealth of Virginia coastal and inland waters a potential for serious events due to severe weather, fires, releases involving hazardous materials, security breaches, cyber-attacks and other maritime incidents; and

Whereas, the public health, safety, and welfare may be threatened as a result of these events; and

Whereas, responding to maritime incidents within the marine environment is challenging and complex; and

Whereas, the Virginia Port Authority (hereinafter, the “VPA”) is charged, under § 62.1-132.11:1 of the 1950 Code of Virginia, as amended (hereinafter, “the Code”), with suppressing fires and responding to other maritime incidents on the waters of Hampton Roads, its tributaries, and other waters in the vicinity of Hampton Roads, and on certain property adjacent to such waters; and

Whereas, each of the parties to this Operating Agreement are members of the Maritime Incident Response Team (the “MIRT”); and

Whereas, each of the parties to this Operating Agreement maintain equipment and personnel for response to maritime incidents in and around the Port of Hampton Roads; and

Whereas, the VPA provides and assigns equipment to agencies that are involved in the various joint activities and operations in and around the Port of Hampton Roads; and

Whereas, the parties to this Operating Agreement desire to establish an agreed framework for addressing and memorializing their respective responsibilities, obligations, and understandings in connection with the MIRT’s operations;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, and warranties, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. Incorporation of Recitals: The foregoing Recitals are incorporated into this Operating Agreement (this “Agreement”) as if set forth in full herein.
2. Definitions: For purposes of this Agreement, the following words and phrases shall be defined as follows:
 - A. Maritime Incident: An All Hazard Maritime Incident that may lead to activation of the MIRT.
 - B. All Hazard Maritime Incident: defined as a maritime event that may include: fires, hazardous materials, RAD / NUC, WMD, security breaches, cyberattacks, dive operations, hazards to navigation, search and rescue, severe weather, port assessments, Medivacs, or any request from a locality, state or federal agency, or the United States Coast Guard (the “USCG”) Captain of the Port requiring a maritime response
 - C. MIRT Member: Any emergency response agency or person (e.g. law enforcement, fire, emergency management) participating in MIRT operations or training events.
 - D. Responsible Party: The locality, federal agency, or state agency responsible for taking the lead and serving as Incident Commander for any Maritime Incident occurring within its boundaries, on its facility or reservation.
 - E. Responsible Party Area of Operations (“AO”): The area included within the boundaries, or the facility or reservation of a Responsible Party.
 - F. Local Response Team: a MIRT Member response team acting pursuant to this Agreement in response to a Maritime Incident.
 - G. Incident Commander: person designated by a Responsible Party to lead efforts in response to a Maritime Incident.
3. Activation of the MIRT: The MIRT shall be activated to respond to a Maritime Incident within USCG Sector Hampton Roads on a case-by-case basis. The MIRT Director or his designee (the “MIRT Designee”) shall determine whether and when the MIRT shall be activated. Any Responsible Party may request activation of the MIRT. Such requests shall be made to the MIRT Director or MIRT Designee. In the event neither of the foregoing persons can be contacted the USCG Sector Hampton

Roads Command Center. Once activated, the MIRT shall notify each Responsible Party MIRT Representative of such activation and of any request for assistance from their Local Response Team through each Responsible Party's Emergency Operations Center.

4. Operational Leadership within a Responsible Party AO: The Incident Commander for the Responsible Party where a Maritime Incident occurs shall have operational control of the MIRT emergency response to that Maritime Incident. For many Maritime Incidents, the USCG Sector Hampton Roads will act as Incident Commander and the MIRT will follow directions issued by the USCG Captain of The Port.
5. Role of the MIRT during a Maritime Incident: Except as provided for in paragraph 6 of this Agreement, below, the MIRT may not serve as the lead agency or Incident Commander during a Maritime Incident. Instead, the MIRT shall provide logistical support, specialized equipment, additional personnel, and advice to the Responsible Party Incident Commander. Additional Incident Command duties may be assigned to MIRT on an as need basis.
6. Operational Leadership Outside of a Responsible Party AO: The MIRT may act as the lead agency and the MIRT Director or MIRT Manager may serve as the Incident Commander for those Maritime Incidents occurring outside of a Responsible Party AO, such as may occur in the open waters of the Chesapeake Bay or in the Atlantic Ocean.
7. Obligations of Each Responsible Party: Each Responsible Party shall:
 - A. Assign emergency response personnel (law enforcement and fire) to a Local Response Team to be available for duty with the MIRT during a Maritime Incident if available.
 - B. Ensure that all individuals assigned to its Local Response Team are properly trained and proficient in Maritime Incident response and that they participate regularly in MIRT-sponsored drills, exercises, and trainings.
 - C. Respond to a Maritime Incident within a timely fashion, when available, and:
 - (1) The skillsets to be represented in the Local Response Team shall be specified by the Incident Commander in charge of response to the Maritime Incident or by the MIRT Director or MIRT Designee, based on incident requirements.
 - (2) Each Local Response Team shall have a designated Team Leader, who shall be in charge of the Local Response Team's personnel, equipment, and apparatus.

(3) Once deployed, the Local Response Team shall be under the overall command of the Incident Commander and it shall follow the directions it is given by the Incident Commander.

- D. Have the option of not responding to a request for a Local Response Team if the Responsible Party's emergency response personnel are already engaged in local emergency response activity or otherwise are unavailable to respond to a Maritime Incident.
- E. Be responsible for all compensation, retirement, disability, workers compensation, life and health insurance, and other benefits to which its personnel are legally entitled while employed or engaged in providing services to or for the MIRT under this Agreement. Under no circumstances shall the MIRT itself be responsible for providing any compensation or benefits to any personnel employed by a Responsible Party.
- F. Acknowledge and agree that its personnel deployed to respond to a Maritime Incident or otherwise working or training with the MIRT are performing work for that Responsible Party only and any accidental injury or occupational illness suffered by Local Response Team members or MIRT Members that results from such work arising out of and is in the course of work being done for the Responsible Party only.
- G. Acknowledge and agree that, to the extent permitted by law, neither the MIRT, the MIRT Director, the MIRT Designee, the Responsible Party Incident Commander, nor any other Responsible Party shall be liable for any damage or harm suffered by any third party as a result of any act, omission, or work performed or committed by any member of a deployed Local Response Team deployed to a Maritime Incident or otherwise performed or committed under this Agreement.

8. Obligations of the VPA: The VPA shall:

- A. Act as the lead agency under this Agreement for all administrative and fiscal purposes.
- B. Develop, maintain, and keep current Standard Operating Procedures for MIRT operations.
- C. Provide oversight of MIRT training and operations.
- D. Provide certain specialized marine all hazards training to include but not limited to: firefighting, hazardous materials, support dive team training, RAD/NUC and other maritime incident response equipment for use by the MIRT, consistent with the obligations and responsibilities.

- E. To the extent practicable, ensure that MIRT training for MIRT Members is conducted in Hampton Roads and during the normal on-duty time of the MIRT Members.
- F. Ensure that the MIRT Director or MIRT Designee deployed to the scene of a Maritime Incident provides technical advice, specialized MIRT equipment, and specially-trained MIRT personnel as may be requested by the Incident Commander in charge of that Maritime Incident.
- G. Schedule and conduct an Annual Marine Firefighting School, Search and Rescue Forum, Public Safety Dive Conference and continuing quarterly MIRT training sessions.

9. Equipment Provisions:

A. Background

- (1) The VPA acts as the primary coordinator for all joint activities and operations between the local, state and federal agencies that have maritime assets and touch the Port of Hampton Roads and the United States Coast Guard. In order to maximize the operational effectiveness of such joint activities, the VPA provides and assigns equipment for the agencies that are involved in the various joint activities and operations around the Port of Hampton Roads. As such, the VPA provides certain equipment, including, but not limited to, Marine Electronics Automatic Identification Systems (AIS), Personal Protection Equipment (PPE), Public Safety Dive gear, side imaging sonars, RAD/NUC Detection equipment; among others (the "VPA Equipment").
- B. Ownership of the Equipment: Regardless of where or by whom the VPA Equipment may be used, stored, or maintained, all of the VPA Equipment shall at all times remain entirely and exclusively the property of the VPA.
- C. Costs of the Equipment: Except as may be otherwise provided under the terms of this Agreement, the VPA Equipment provided to the agency under this Agreement shall be at the VPA's sole expense and at no cost to the agency.
- D. No Warranty as to Serviceability: The VPA makes no warranty with respect to the VPA Equipment's serviceability nor its fitness for any particular use.
- E. Readiness of the Equipment: The VPA will ensure that the VPA Equipment provided the agency under this Agreement is in sound working order at the time of its delivery to the agency. Thereafter, the agency shall be responsible for ensuring that the VPA Equipment it receives remains in sound working order and fully capable of performing its designed function.

- F. Inventory of the Equipment: The agency shall maintain a current inventory of the VPA Equipment it has on hand. A copy of such inventories shall be provided the VPA upon request.
- G. Marking of the Equipment: The VPA will mark VPA Equipment as being owned by the VPA and the agency shall ensure that the VPA ownership markings on the Equipment are not obliterated or removed during the time such equipment is in the custody of the agency.
- H. Storage of the Equipment: When not actually in use, all of the VPA Equipment provided the agency by the VPA under this Agreement shall be stored either aboard one or more of the agency boats, in or at a designated secured area. Additionally, the agency shall ensure that the VPA Equipment in its custody is stored in a safe and secure location in a manner calculated to best preserve and protect the equipment at issue, consistent with the agency's own operational needs, readiness requirements, and space availability.
- I. Availability of the Equipment: The agency shall make any or all of the VPA Equipment it receives available to any other agency or entity as soon as practicable upon being directed to do so by the VPA Director of MIRT and Emergency Operations.
- J. Access to the Equipment: The agency shall allow VPA personnel (or any other individual or entity authorized by the VPA) to have unrestricted access to the VPA Equipment provided, with the understanding that the VPA shall make every effort to notify the agency of any request for access at least one working day in advance.
- K. Technical Advice: The VPA shall, upon request, provide the agency technical advice and guidance on the operation, storage, maintenance, or use of the VPA Equipment provided, and the agency shall seek the technical advice of the VPA on that equipment's operation, storage, maintenance, or use prior to seeking such advice or guidance from any other source.
- L. Return of the Equipment: At the request of the VPA, the agency shall return to the VPA, within two working days and at the VPA's expense, any or all VPA Equipment provided the agency under this Agreement.
- M. Maintenance of the Equipment: Except for VPA vehicles and pumps specifically designated by the VPA to be maintained solely by the VPA at the VPA's expense, the agency will be responsible for all routine daily, weekly, and monthly preventative maintenance and all minor repairs to the equipment it has been provided at the agency's own expense. For the purposes of this Agreement, "minor repairs" shall be understood to be those repairs having a one-time cost of \$100.00 or less. The VPA will be responsible for all annual preventative maintenance on VPA Equipment, as well as for all repairs to its equipment that are not minor repairs at the VPA's own expense. Each agency shall keep

accurate records of the maintenance it provides any VPA Equipment and will, at the VPA's request, make those records available for inspection and copying by the VPA or its designee.

- N. **Schedule of Routine Maintenance:** The VPA shall provide each agency with a schedule of routine daily, weekly, and monthly preventative maintenance on all VPA Equipment provided that agency.
- O. **Cost of Consumable Supplies:** The VPA may designate certain vehicles for which the VPA will be responsible for all consumable supplies (hereinafter the "Designated Vehicle(s)"). The VPA will provide a credit card for each Designated Vehicle to be used for the purchase of fuel. The VPA will pay for all appropriate fuel purchases and expenditures made by an agency via the credit card provided. For all VPA Equipment, the agency shall be responsible for all fluids, motor oil, disposable filters, batteries, and other small items needed for routine operation or maintenance of that particular vehicle (hereinafter the "Consumable Supplies") consumed as a result of the VPA Equipment's use by the agency for anything other than MIRT-related operational or training activities. The VPA shall be responsible for Consumable Supplies consumed by VPA equipment in connection with its use for MIRT-related operations or training.
- P. **Ordinary Wear and Tear:** It is expected that VPA Equipment provided the agency will experience the ordinary wear and tear associated with its routine and intended use. Accordingly, the VPA acknowledges and agrees that the VPA Equipment it provides the agency may not be in its original condition at such time that it is returned to the VPA.
- Q. **Proficiency with the Equipment:** The agency shall ensure that its personnel operating or maintaining VPA Equipment are and remain proficient in its operation and routine maintenance. Additionally, the agency shall further ensure that VPA Equipment is not operated by the agency's personnel who lack proficiency in its use or routine maintenance. Nothing in this Agreement shall be construed to preclude the agency from developing the requisite level of operational and maintenance proficiency through training exercises or activities designed to provide expertise to those who would otherwise lack such proficiency.
- R. **Use of the Equipment:** The agency may use the VPA Equipment for any operational or training activities undertaken by the agency's personnel having due regard for the VPA Equipment's intended availability to support joint activities and operations in and around the Port of Hampton Roads.
- S. **Software Updates:** The United States Coast Guard provides updated code for the AIS equipment as needed. The agency will be responsible for programming the code into the equipment.

- T. Damage to or Loss of Equipment: In the event any VPA Equipment provided the agency under this Agreement shall suffer damage or loss, the agency shall as soon as practicable (but in no case more than three working days after such damage or loss) notify the VPA of the damage or loss, along with an explanation of how the damage or loss occurred. Except in those instances in which VPA Equipment has been damaged or lost through reckless, willful, or intentional abuse or misuse by the agency, the VPA shall absorb the cost of any damage or loss of VPA Equipment provided the agency under this Agreement. The agency may be responsible for the cost of replacing any VPA Equipment damaged or lost through reckless, willful, or intentional abuse or misuse of the VPA Equipment by the agency's employees or agents.
- U. Replacement of the Equipment: VPA Equipment that is expended, damaged, lost, or returned to the VPA may, in the VPA's sole discretion, be replaced at no cost to the agency to which such equipment originally was provided. However, nothing in this Agreement shall entitle the agency to receive or enjoy the use of any VPA Equipment at any time.
- V. Further Transfer of the Equipment: The agency shall not be permitted to transfer the custody or control of that same equipment to any other municipality, individual, or entity without obtaining the prior consent of the VPA's Director of MIRT and Emergency Operations. Nothing in this Agreement shall be construed to preclude the transfer of VPA Equipment to another agency or entity to respond to operational demands or contingencies during a maritime incident. In the event of such transfer to another agency or entity during a maritime incident, both the agency and the agency or entity receiving shall advise the VPA of the details of any such transfer at the earliest practicable time.
10. No Pre-Emption of Existing Agreements: Nothing in this Agreement shall pre-empt any mutual aid agreement that may exist between the VPA and any Responsible Party, or between Responsible Parties.
11. Amendment to the Agreement: This Agreement may not be amended except by means of a writing signed by and on behalf of all parties to be bound by the amended Agreement.
12. Withdrawal from the Agreement: Any party to this Agreement may withdraw from it at any time, provided that the withdrawing party gives the MIRT Director no less than thirty (30) days' advance written notice of the date on which such withdrawal shall become effective.
13. Termination of the Agreement: This Agreement shall be terminated upon the occurrence of any of the following events:
- A. Withdrawal of the VPA from the Agreement;
 - B. Withdrawal of all Responsible Parties other than the VPA from the Agreement;

- C. Amendment of the Code deleting from it provision for the MIRT; and
 - D. Any change in the laws of the Commonwealth of Virginia that has the effect of relieving local fire and emergency response authorities of the primary responsibility for responding to fires or hazardous materials releases or threatened releases within their respective jurisdictions.
14. Notices: Any notices required by or contemplated by this Agreement are to be made to the participating agency's MIRT representative.
 15. Headings: The headings appearing in this Agreement are purely for administrative convenience and are not to be construed as adding to or in any way modifying the text of this Agreement nor any of the individual terms to which they are appended.
 16. Venue: Because the VPA has its headquarters in the City of Norfolk, the venue for any judicial resolution of any dispute arising under this Agreement shall be in the City of Norfolk, Virginia.
 17. Governing Law: This Agreement shall be construed in accordance with and all disputes hereunder shall be governed by the laws of the Commonwealth of Virginia.
 18. Authority: The parties agree that the undersigned are fully authorized to execute this Agreement on behalf of the federal, state, municipal, or private entity for which they are signing and that all governmental or corporate formalities necessary and attendant to the execution of this Agreement have been satisfied in advance of their executing the same.
 19. Counterpart Originals: This Agreement is being executed in four identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and same agreement.

N WITNESS WHEREOF, and intending to be legally bound, the following parties have executed the foregoing Virginia Port Authority Maritime Incident Response Team Operating Agreement on the dates indicated below:

THE VIRGINIA PORT AUTHORITY:

By _____

Date _____

Its _____

PRINCE GEORGE COUNTY, VIRGINIA:

By _____

Date _____

Its _____