

Articles of Incorporation of H₂O Community Development Authority

The undersigned, pursuant to Chapter 51, Title 15.2 of the Code of Virginia, adopts the following Articles of Incorporation for the H₂O Community Development Authority and states as follows:

Article I

Name

The name of this authority is H₂O COMMUNITY DEVELOPMENT AUTHORITY (the "CDA").

Article II

Organization

Pursuant to an ordinance adopted by the City Council of the City of Hampton, Virginia ("City Council") on September 28, 2005, the CDA shall be organized by the City of Hampton, Virginia under the Virginia Water and Waste Authorities Act (Chapter 51, Title 15.2 of the Code of Virginia of 1950, as amended) (the "Act"), as a public body politic and corporate and a political subdivision governed by the laws of the Commonwealth of Virginia.

Article III

Members

The affairs of the CDA shall be conducted by an authority board of five members ("CDA Board"). The initial CDA Board members are as set forth in Exhibit A attached hereto and incorporated by reference. All members shall be appointed by the City Council. One member of the CDA board shall be the City Manager or his designee. ~~Four members of the CDA board shall be the petitioner who petitioned the City Council for creation of the CDA or his designee.~~ The City Council shall also appoint three alternate board members in a manner consistent with the Act. Each member shall serve a four year term, except the initial members who shall serve the terms of office set forth in Exhibit A hereto. The election of officers of the CDA shall be as set forth in the By-Laws of the CDA. Qualifications and appointment of members of the CDA Board shall be consistent with the requirements of the Act.

The CDA Board shall have the powers and duties set forth in the Act and in these Articles of Incorporation and the By-Laws, to the extent that such powers and duties are not inconsistent with the Act.

The initial CDA Board members including the alternate member shall have initial terms that will commence on September 28, 2005 and expire on June 30, 2009. CDA Board members appointed on and after June 2017, excluding any alternate member, shall be appointed initially for terms of one, two, three and four years; one member being appointed for a one-year term, one member being appointed for a two-year term, one member being appointed for a three-year term, and two members being appointed for four-year terms. Any subsequently appointed CDA Board member shall serve four-year terms. Any subsequently appointed alternate member shall have the same term as the member for whom such alternative member serves as an alternate.

Article IV

Principal Office

The Authority's principal office shall be c/o Bonnie M. France, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219. The Authority may conduct its business and maintain offices for such purposes at such other places within or without the City of Hampton, Virginia as may from time to time be deemed advisable by the Board, and not in conflict with the requirements of the Act.

Article V

Authority District

The land initially encompassed within the CDA is set forth in **Exhibit B** attached hereto (the "Initial Authority District") provided that the City Council, upon the request of the CDA or the petitioner petitioning to create the CDA, may release or exclude from the CDA district before or after the issuance of the Bonds certain de minimis portions of land not to exceed approximately one acre. In addition, the CDA may release and exclude from the CDA district portions of land with respect to which all special assessments have been paid or prepaid.

Article VI

Purposes and Powers

The CDA is organized for the purpose of exercising all powers granted by the Act, including financing, funding, planning, establishing, acquiring, constructing or reconstructing, enlarging, extending, equipping, operating and maintaining all or a portion of the infrastructure improvements generally described in the Petition attached hereto as **Exhibit C** to create the CDA. The CDA shall have all powers granted to a "community development authority" under the Act.

Article VII

Not-for-Profit

The CDA shall not be organized or operated for pecuniary gain or profit. No part of the net earnings of the CDA shall inure to the benefit of, or be distributable to any member, director, officer, or any other private person, except that the CDA shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments in furtherance of the purposes set forth in Article VI.

Article VIII

Amendment of Articles

These Articles of Incorporation may be amended at any time and from time to time by the City Council as now or hereafter prescribed by the Act.

Article IX

Registered Office and Registered Agent

The address of the initial registered office of the Authority is c/o Bonnie M. France, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219.. The initial Registered Agent of the Authority is Bonnie M. France, whose business address is identical to that of the initial registered office and who is a resident of Virginia and a member of the Virginia State Bar.

Article X

Initial Members

The names and addresses of the initial members of the CDA Board are as set forth on the attached and incorporated Exhibit A.

Article XI

Indemnification

- (a) For purposes of this Article XI the following definitions shall apply:
 - (i) "expenses" include counsel fees, expert witness fees, and costs of investigation, litigation and appeal, as well as any amounts expended in asserting a claim for indemnification;
 - (ii) "liability" means the obligation to pay a judgment, settlement, penalty, fine, or other such obligation;

(iii) "legal entity" means a corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise; and

(iv) "proceeding" means any threatened, pending, or completed action, suit, proceeding or appeal whether civil, criminal, administrative or investigative and whether formal or informal.

(b) In every instance in which the Virginia Nonstock Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of directors or officers of a corporation to the corporation, the members, directors and officers of the CDA shall not be liable to the CDA.

(c) The CDA shall indemnify any individual who is, was or is threatened to be made a party to a proceeding (including a proceeding by or in the right of the CDA) because such individual is or was a member, director or officer of the CDA or because such individual is or was serving the CDA or any other legal entity in any capacity at the request of the CDA while a member, director or officer of the CDA, against all liabilities and reasonable expenses incurred in the proceeding except such liabilities and expenses as are incurred because of such individual's willful misconduct or knowing violation of the criminal law. Service as a member, director or officer of a legal entity controlled by the CDA shall be deemed service at the request of the CDA. The determination that indemnification under this paragraph (c) is permissible and the evaluation as to the reasonableness of expenses in a specific case shall be made, in the case of a member or director, as provided by law, and in the case of an officer, as provided in Section (d) of this Article; provided, however, that if a majority of the members of the CDA has changed after the date of the alleged conduct giving rise to a claim for indemnification, such determination and evaluation shall, at the option of the person claiming indemnification, be made by special legal counsel agreed upon by the CDA Board and such person. Unless a determination has been made that indemnification is not permissible, the CDA shall make advances and reimbursements for expenses incurred by a member, director or officer in a proceeding upon receipt of an undertaking from such member, director or officer to repay the same if it is ultimately determined that such member, director or officer is not entitled to indemnification. Such undertaking shall be an unlimited, unsecured general obligation of the member, director or officer and shall be accepted without reference to such member's, director's or officer's ability to make repayment. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that a member, director or officer acted in such a manner as to make such member, director or officer ineligible for indemnification. The CDA is authorized to contract in advance to indemnify and make advances and reimbursements for expenses to any of its members, directors or officers to the same extent provided in this paragraph (c).

(d) The CDA may, to a lesser extent or to the same extent that it is required to provide indemnification and make advances and reimbursements for expenses to its members, directors and officers pursuant to paragraph (c) of this Article, provide indemnification and make advances and reimbursements for expenses to its employees and agents, the members, directors, officers,

employees and agents of its subsidiaries and predecessor entities, and any person serving any other legal entity in any capacity at the request of the CDA, and may contract in advance to do so. The determination that indemnification under this paragraph (d) is permissible, the authorization of such indemnification and the evaluation as to the reasonableness of expenses in a specific case shall be made as authorized from time to time by general or specific action of the CDA Board, which action may be taken before or after a claim for indemnification is made, or as otherwise provided by law. No person's rights under paragraph (c) of this Article shall be limited by the provisions of this paragraph (d).

(e) The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors and administrators. Special legal counsel selected to make determinations under this Article may be counsel for the CDA. Indemnification pursuant to this Article shall not be exclusive of any other right of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the CDA and indemnification under policies of insurance purchased and maintained by the CDA or others. However, no person shall be entitled to indemnification by the CDA to the extent such person is indemnified by another, including an insurer. The CDA is authorized to purchase and maintain insurance against any liability it may have under this Article or to protect any of the persons named above against any liability arising from their service to the CDA or any other legal entity at the request of the CDA regardless of the CDA's power to indemnify against such liability. The provisions of this Article shall not be deemed to preclude the CDA from entering into contracts otherwise permitted by law with any individuals or legal entities, including those named above. If any provision of this Article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Article, and to this end the provisions of this Article are severable.

(f) No amendment, modification or repeal of this Article shall diminish the rights provided hereunder to any person arising from conduct or events occurring before the adoption of such amendment, modification or repeal.

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IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation as of the ____ day of _____, 2005, as duly authorized by the City Council of the City of Hampton, Virginia by Ordinance adopted September 28, 2005.

By: _____
Jesse T. Wallace, Jr., City Manager, City of
Hampton, Virginia

Exhibits:

- A – Names and Addresses of Initial Members
- B – Description of Initial CDA District Boundaries

Exhibit A

Names and Addresses of Initial Members

<u>Name and Address</u>	<u>Term of Office Commences</u>	<u>Expires</u>
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Exhibit B

Description of Initial Community Development Authority Boundaries

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