

**MEMORANDUM OF AGREEMENT  
ESTABLISHING THE  
HAMPTON ROADS REGIONAL STORMWATER MANAGEMENT PROGRAM**

**WHEREAS**, Section 15.2-4200, *et seq.*, of the Code of Virginia enables local governments to establish Planning District Commissions; and

**WHEREAS**, the eighteen local governments that are signatories to this Agreement have acted, in accordance with Section 15.2-4200, *et seq.*, of the Code of Virginia, to establish the Hampton Roads Planning District Commission (HRPDC); and

**WHEREAS**, the HRPDC has been requested and has undertaken various studies to support local government stormwater management programs, including compliance with Virginia Stormwater Management Program (VSMP) Municipal Separate Storm Sewer System (MS4) Permits; and

**WHEREAS**, the signatory local governments have requested the HRPDC to administer and coordinate a regional stormwater management program; and

**WHEREAS**, pursuant to the Clean Water Act, the U.S. Environmental Protection Agency (EPA) has promulgated implementing regulations, 40 CFR Part 122, which established the National Pollutant Discharge Elimination System (NPDES) Permits for Municipal Separate Storm Sewer System (MS4) Discharges; and

**WHEREAS**, pursuant to the Virginia Stormwater Management Act, Section 62.1-44.15:24, *et. seq.*, of the Code of Virginia, the Board of Soil and Water Conservation has promulgated implementing regulations 9VAC25-870, *et. seq.*, which establish the requirements that localities obtain permits for their MS4 discharges; and

**WHEREAS**, the majority of the eighteen signatory local governments are required by their MS4 permits to conduct certain activities, including reporting on their discharges, conducting public information and education programs, and certain other activities; and

**WHEREAS**, the Water Quality Monitoring and Reporting Act and implementing regulations promulgated by the State Water Control Board establish requirements for the preparation of Total Maximum Daily Load (TMDL) Implementation Plans, which apply to activities conducted by localities in general as well as activities conducted in implementing MS4 permit requirements; and

**WHEREAS**, the Chesapeake Bay Preservation Act and the Virginia Erosion and Sediment Control Law and implementing regulations also establish stormwater management requirements that govern one or more of the eighteen signatory local governments; and

**WHEREAS**, sixteen local governments and the HRPDC executed the Memorandum of Agreement Establishing the Hampton Roads Regional Stormwater Management Program on September 5, 2003 and that Agreement expired on December 31, 2007; and

WHEREAS, eighteen local governments and the HRPDC executed the Memorandum of Agreement Establishing the Hampton Roads Regional Stormwater Management Program on March 6, 2008, and that Agreement expired on June 30, 2013; and

WHEREAS, eighteen local governments and the HRPDC executed the Memorandum of Agreement Establishing the Hampton Roads Regional Stormwater Management Program on July 1, 2013, and that Agreement expired on June 30, 2018; and

WHEREAS, eighteen local governments and the HRPDC executed the Memorandum of Agreement Establishing the Hampton Roads Regional Stormwater Management Program on July 1, 2018, and that Agreement expires on June 30, 2023.

**NOW THEREFORE**, the signatory parties enter into the following Agreement.

This Agreement effective as of the first day of July 2023, among and between the eighteen local governments in Hampton Roads and the HRPDC, establishes and maintains the Hampton Roads Regional Stormwater Management Program.

## **BASIC PREMISES**

All local governments in Hampton Roads operate stormwater management programs.

The Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth and Virginia Beach received VPDES Permits in 1996. Those permits, which were renewed in 2001, govern the discharges from their MS4s to waters of the state and impose certain operational and reporting requirements on those systems. In 2005, these permits were converted to VSMP permits. These permits must be renewed on a 5 year basis and the localities applied for renewed permits in 2005. Localities operated programs under administratively continued permits until June 30, 2016. The existing permits became effective on July 1, 2016 and have been administratively continued since June 30, 2021.

The Cities of Poquoson, Suffolk, and Williamsburg, and the Counties of Gloucester, Isle of Wight, James City, and York were all identified by the EPA as requiring VPDES permits under Phase II of the MS4 regulations. Those localities that operate MS4s obtained VPDES permits in March 2003. Those permits also imposed certain operational and reporting requirements on those systems. In 2005, these permits were converted to VSMP permits. These permits must be renewed on a 5 year basis with the next renewal planned for 2023.

On April 15, 2016, the Virginia Department of Environmental Quality notified Isle of Wight County that their Phase II MS4 Permit would be terminated because the County neither owned nor operated a small MS4 within the census-defined urbanized area. Isle of Wight County does not currently own or maintain stormwater systems outside of County-owned properties.

Although Gloucester County was initially identified by the EPA as requiring a Phase II MS4 permit, it was subsequently determined that permit coverage for Gloucester County was not required.

The City of Franklin, the Counties of Gloucester, Isle of Wight, Southampton and Surry and the Towns of Smithfield and Windsor are governed by stormwater management requirements established under the Virginia Stormwater Management Act and the Virginia Erosion and Sediment Control Law. The Chesapeake Bay Preservation Act also governs Gloucester and Surry Counties and the Towns of Smithfield and Windsor.

As of July 1, 2014, all localities have implemented stormwater management programs that meet the minimum requirements established in the Virginia Stormwater Management Act. The Virginia Stormwater Management Act imposes operational and reporting requirements on all localities that are required to implement stormwater management programs.

The local governments are interested in managing stormwater in a manner which protects and does not degrade waters of the Commonwealth and which meets locally established quality of life goals and objectives. The Clean Water Act and the VSMP require that stormwater quantity and quality be managed to the maximum extent practicable.

In carrying out their stormwater management responsibilities, the local governments have developed a consensus on regional goals to guide the operation of their stormwater management programs. Initially, as approved by the HRPDC at its Executive Committee Meeting of September 15, 1999, these goals are to:

1. Manage stormwater quantity and quality to the maximum extent practicable, including:
  - Implement best management practices (BMPs) and retrofit flood control projects to provide water quality benefits.
  - Support site planning and plan review activities.
  - Manage pesticide, herbicide and fertilizer applications.
2. Implement public information activities to increase citizen awareness and support for the program.
3. Meet the following needs of citizens:
  - Address flooding and drainage problems.
  - Maintain the stormwater infrastructure.
  - Protect waterways.
  - Provide the appropriate funding for the program.
4. Implement cost-effective and flexible program components.
5. Satisfy MS4 stormwater permit requirements:

- Enhance erosion and sedimentation control.
- Manage illicit discharges, spill response, and remediation.

This Agreement establishes the administrative framework, which will be used by the local governments in Hampton Roads to address certain stormwater management requirements under the above-cited state and federal laws and regulations.

Eighteen local governments in the Hampton Roads Region will be participants in and signatories to the Agreement.

## **HRPDC RESPONSIBILITIES**

Under the terms of this Agreement, the HRPDC staff must:

- Provide technical support and policy analysis related to stormwater and water quality issues to local government staff.
- Provide the necessary administrative, technical and clerical resources to support program activities to ensure that the MS4 permit-holding cities and counties meet applicable stormwater management requirements.
- Prepare an annual work program and budget for the Hampton Roads Regional Stormwater Management Program. The annual work program will be incorporated into the HRPDC Unified Planning Work Program and the annual budget will be incorporated into the HRPDC budget.
- Assist the signatories in coordinating reporting on stormwater related activities to other state and federal agencies to ensure that program requirements are met in a cost-effective manner, that minimizes duplicative reporting and the administrative burden on the signatories.
- Conduct a regional stormwater education program. This will include public education activities and may include outreach to specific economic sectors and groups. The stormwater education subcommittee of [askHRgreen.org](http://askHRgreen.org) will be responsible for guiding the development of original materials, including publications, media advertising and promotional items. This may also include development of locality-specific materials or coordination of bulk purchases. The stormwater education subcommittee of [askHRgreen.org](http://askHRgreen.org) will coordinate with HRPDC staff on the educational and outreach components of the Hampton Roads Regional Stormwater Management Program.
- Develop and conduct a regional training program for municipal employees, contractors, civic leaders, and other interested parties. The training program will emphasize stormwater management, pollution prevention and permit issues.

- Respond equitably and in a timely fashion to requests from all signatory local governments for technical assistance. The time frame for responses will be based on experience, the complexity of individual requests and the overall work load of program staff.
- Provide other technical support, as requested, to the signatory local governments.
- Upon request from one or more participating localities, conduct technical studies to support compliance by the localities with MS4 permit requirements and VSMP program requirements.
- Facilitate development of multi-jurisdictional management plans for shared watersheds, as requested.
- Take steps, in conjunction with the signatory local governments, to obtain financial support for program activities from outside sources, including state, federal and private grants, to the extent that this may be accomplished without creating a conflict of interest, as determined by the signatory local governments.
- Contract with and manage consultants, including both private firms and academic institutions, to support the regional program, including provision of requested services to local governments in excess of the common program elements.
- Represent the Hampton Roads Regional Stormwater Management Program at federal, state, regional and local governmental, civic, professional and political organizations, agencies, and committees.
- Provide technical and administrative support, as appropriate, to those localities that are required to develop stormwater management programs to meet VSMP requirements, but that are not required to obtain MS4 permits for their stormwater discharges.
- Prepare annual program reports, or components thereof, which comply with the provisions of the MS4 permits and stormwater management programs of the signatory localities.
- Facilitate local government involvement in TMDL studies being prepared through the Virginia Department of Environmental Quality and EPA and facilitate preparation of TMDL Implementation Plans for impaired waters in the Hampton Roads Region as requested.
- Prepare an annual report of activities undertaken through the Hampton Roads Stormwater Management Program. This report will include summaries of related activities undertaken on a cooperative basis by the signatories.
- Identify state and federal regulatory actions that may affect local government stormwater programs, serve on regulatory advisory panels (RAPs) as necessary,

conduct policy analysis, and develop policy recommendations on behalf of the HRPDC.

- Coordinate the compilation of regional data for MS4 permit annual reports to the appropriate regulatory authority, as appropriate.

## **LOCAL GOVERNMENT RESPONSIBILITIES**

Under the terms of the Agreement, the signatory local governments must:

- Participate, as appropriate, in the Regional Environmental Committee to represent the local government's respective stormwater and water quality related concerns.
- Appoint a representative and alternates, as appropriate, to the stormwater education subcommittee of [askHRgreen.org](http://askHRgreen.org).
- Provide, in a timely fashion, all locally generated data required by their MS4 permits and such other data as may be necessary to accomplish locally requested services.
- Provide timely technical review of HRPDC analyses and conclusions.
- Participate in regional efforts to conduct public outreach and education activities regarding the Commonwealth's TMDL study process and efforts to develop TMDL Implementation Plans for impaired waters lying within the locality or within watersheds that include the locality.
- Provide input on regulatory issues to HRPDC staff and serve on RAPs or provide input to the regional RAP representative as appropriate.
- Reasonably support HRPDC efforts to obtain additional funding to support the regional programs to the extent that this may be accomplished without creating a conflict of interest, as determined by the signatory local governments.
- Provide annual funding to support the agreed-upon regional program, subject to annual appropriation.

## **METHOD OF FINANCING**

The majority of program costs will be allocated according to a formula reflecting each locality's share of the regional population. Costs for additional projects or services will be allocated based on a formula developed by the HRPDC staff and approved by the HRPDC with the concurrence of the signatory local governments. For example, in the past, the cost of legal services have been split between the localities with MS4 permits and the

maintenance costs for the regional online BMP database were split by the subset of localities still using the system.

## **AVAILABILITY OF FUNDS**

Performance by the HRPDC of its responsibilities under this Agreement is subject to the availability of funding from the signatory local governments. Failure of the local governments to provide the necessary funding to support these activities will constitute a Notice to Modify or Terminate the Agreement.

## **MODIFICATIONS**

Modifications to this Agreement must be expressly written, approved by the HRPDC, and accepted by all signatories.

## **DURATION AND TERMINATION**

This Agreement will have a term of ten years, extending from the date of full execution of the Agreement by the signatories or July 1, 2023 whichever occurs last through June 30, 2033. To conform to local government charter and Virginia Code requirements, the funding provisions of this Agreement are subject to annual appropriations.

No later than September 1, 2032, the signatories will institute a formal reevaluation of the Hampton Roads Regional Stormwater Management Program. This reevaluation will serve as the basis for appropriate modification of the Agreement and the Hampton Roads Regional Stormwater Management Program.

Any signatory may terminate its participation in the Hampton Roads Regional Stormwater Management Program by sending a written Notice To Terminate to all other parties. Such termination will be effective the start of the following Fiscal Year. Depending upon the terms of individual VSMP permits, termination of participation in the Hampton Roads Regional Stormwater Management Program in the middle of a permit term may result in changes to permit conditions and require renegotiation of the individual locality's VSMP permit from the Virginia Department of Environmental Quality.

## **OWNERSHIP OF PROPERTY**

It is not the intent of the signatories that the Agreement will result in the purchase, ownership, leasing, holding, or conveying of any form of interest in any real property.

## **INDEMNITY**

It is the intent of the signatories that no signatory will be held liable for any damage or associated penalties caused by or associated with the failure of any other signatory to discharge its duties or to exercise due diligence in discharging its duties under this Agreement, and that no signatory, by entering this Agreement, waives any defenses or immunities available to it at law, including, but not limited to, those set forth in Section 15.2-970 of the Code of Virginia.

It is the intent of the signatories that no signatory will be held liable for any damage or associated penalties caused by or associated with the failure of any other signatory to comply with the terms and conditions of the signatory's VSMP permit.

#### **NO INTENT TO BENEFIT THIRD PARTIES**

This Agreement is intended for the benefit of the parties hereto and is not for the benefit of, nor may any provision hereof be enforced by, any other person or entity.

#### **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Agreement.



## **LIST OF SIGNATORIES**

Signature pages will be signed in counterparts.

CITY OF CHESAPEAKE

CITY OF FRANKLIN

GLOUCESTER COUNTY

CITY OF HAMPTON

ISLE OF WIGHT COUNTY

JAMES CITY COUNTY

CITY OF NEWPORT NEWS

CITY OF NORFOLK

CITY OF POQUOSON

CITY OF PORTSMOUTH

SOUTHAMPTON COUNTY

CITY OF SUFFOLK

SURRY COUNTY

CITY OF VIRGINIA BEACH

CITY OF WILLIAMSBURG

YORK COUNTY

TOWN OF SMITHFIELD

TOWN OF WINDSOR

HAMPTON ROADS PLANNING DISTRICT COMMISSION

This listing of participants will be followed by individual signature pages.

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF CHESAPEAKE

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF FRANKLIN

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

GLOUCESTER COUNTY

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF HAMPTON

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

ISLE OF WIGHT COUNTY

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

JAMES CITY COUNTY

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF NEWPORT NEWS

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_



**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF NORFOLK

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF POQUOSON

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF PORTSMOUTH

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

SOUTHAMPTON COUNTY

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF SUFFOLK

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

SURRY COUNTY

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF VIRGINIA BEACH

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF WILLIAMSBURG

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_



**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

YORK COUNTY

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

TOWN OF SMITHFIELD

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

TOWN OF WINDSOR

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_

**IN WITNESS THEREOF**, the Chief Administrative Officer of the local governments and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

HAMPTON ROADS PLANNING  
DISTRICT COMMISSION

By:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:\_\_\_\_\_