MEMORANDUM OF AGREEMENT
ESTABLISHING THE
HAMPTON ROADS REGIONAL WATER QUALITY MONITORING PROGRAM

This Memorandum of Agreement ("Agreement") is entered into this First day of March, 2014 by and among the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, and Virginia Beach (individually, the "Locality;" collectively, the "Localities") and the Hampton Roads Planning District Commission ("HRPDC").

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

WHEREAS, the Localities, in common with several other local governments in the region, have acted, pursuant to Sections 15.2-4200, *et seq.* of the Code of Virginia, to establish the 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") and the Municipal Separate Storm Sewer ("MS4") Permits; and

WHEREAS, the Localities have requested the HRPDC to coordinate a regional water quality monitoring program; and

NOW, THEREFORE, in consideration of the premises, mutual covenants, and obligations contained herein, the Localities and HRPDC hereby enter into this Agreement for the purposes of establishing and maintaining the Hampton Roads Regional Water Quality Monitoring Program.

BASIC PREMISES

The Localities initially received Virginia Pollutant Discharge Elimination System ("VPDES") Permits in 1996. Those permits, which were renewed in 2001, govern the discharges from the individual Locality's MS4s to waters of the state and impose certain operational and reporting requirements on those systems. These permits are renewable on a five (5) year basis, and the Localities applied for renewed permits in 2005. The Localities continue to operate programs under administratively continued permits. Permit renewals are expected in 2014.

The Localities are interested in monitoring stormwater in a manner which quantifies the nitrogen, phosphorus, and sediment loads associated with specific land uses in Hampton Roads.

The objective of the Regional Water Quality Monitoring Program is to collect data at a regional scale that will accurately measure the amount of nutrient and sediments delivered to waterways by the local MS4 systems. The data would be submitted to the

Virginia Department of Environmental Quality ("DEQ") and/or the Chesapeake Bay Program for updates to improve the accuracy of existing computer models, provide a basis upon which to administer local stormwater programs with a greater degree of precision, and improve action plans to meet the Chesapeake Bay total maximum daily load ("TMDL") and other local TMDLs for impaired waters.

The Regional Water Quality Monitoring Program is based on a five-year work plan with acquisition of monitoring equipment and services amortized over the entire term of the initial program.

HRPDC RESPONSIBILITIES

Under the terms of this Agreement, the HRPDC staff is responsible for the following:

- Provide technical support related to water quality monitoring issues to local government staff.
- Provide the necessary administrative, technical, and clerical resources to support program activities.
- Prepare an annual budget for the Hampton Roads Regional Water Quality Monitoring Program.
- Assist the signatories in coordinating communication on monitoring activities to state and federal agencies to ensure that program goals are met.
- Take steps, in conjunction with the Localities, to obtain financial support for program activities from outside sources, including federal, state, and private grants, to the extent that this objective may be accomplished without creating a conflict of interest, as determined by the Localities.
- Contract with the Hampton Roads Sanitation District ("HRSD") and the United States Geological Survey ("USGS") to provide sampling and data analysis required by the regional program.
- Provide the raw data from all monitoring devices directly to the Localities.
- Prepare annual program reports, or components thereof, which comply with the provisions of the MS4 permits and stormwater management programs of the Localities.
- Facilitate the use of the monitoring data in the local TMDL studies being prepared through the DEQ and the United States Environmental Protection Agency and facilitate preparation of TMDL Implementation Plans for impaired waters in the Hampton Roads Region, if requested.

LOCAL GOVERNMENT RESPONSIBILITIES

Under the terms of the Agreement, the Localities are responsible for the following:

- Appoint a representative to serve on the steering committee for the Regional Water Quality Monitoring Program to represent the local government stormwater and water quality related concerns.
- Provide timely technical review of HRPDC analyses and conclusions.
- Provide input on monitoring site selection and land use characterization to support HRSD's sampling and USGS data analysis.
- Provide annual funding to support the agreed-upon regional program, subject to appropriation.

METHOD OF FINANCING

Program costs will be divided equally between the Localities, and the annual cost to each Locality for each year of the five year term of this Agreement is estimated at $84,000. Local contributions may be increased above this annual estimate to reflect program needs only upon modification of this Agreement.

Financial support from other entities, such as federal and state agencies, and the private sector, may be sought and obtained to support the activities of the Hampton Roads Regional Water Quality Monitoring Program, to the extent that this financing effort may be accomplished without creating a conflict of interest, as determined by the Localities.

AVAILABILITY OF FUNDS

Performance by the HRPDC of its responsibilities under this Agreement is subject to the availability of funding from the Localities. The Localities' failure 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 submitted in writing, approved by the HRPDC, and accepted by all signatories.

DURATION AND TERMINATION

This Agreement will have a term of five (5) years, extending from the date of full execution of the Agreement by the signatories. To conform to local government charter and Virginia Code requirements, the funding provisions of this Agreement will be subject

to annual appropriations.

Any signatory may terminate its participation in the Hampton Roads Regional Water Quality Monitoring Program by written Notice to Terminate to all other parties. Such termination will be effective with the start of the following fiscal year. Depending upon the terms of individual MS4 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 MS4 permit from DEQ.

OWNERSHIP OF PROPERTY

It is not the intent of the signatories that this Agreement will result in the purchase, ownership, leasing, holding, or conveying of any real property, other than those real property rights necessary for the location of the monitoring equipment. At the option of the locality, the equipment paid for by the Localities will be the property of the locality in which the equipment is located.

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 MS4 permit.

SEVERABILITY

If any provision in this Agreement is determined by a court of competent jurisdiction to be invalid and unenforceable, then the remaining provisions shall survive and remain valid and enforceable.

DISPUTE RESOLUTION AND APPLICABLE LAW

This Agreement shall be governed, interpreted and enforced by the laws of the Commonwealth of Virginia. In the event of a dispute between any parties arising out of or related to the Agreement, the parties agree to submit any cause of action to mediation upon consent of all necessary parties, or, to a court with competent jurisdiction located in the corporate limits of one of the member Localities.

LIST OF SIGNATORIES

Signature pages will be signed in counterparts.

CITY OF CHESAPEAKE

CITY OF HAMPTON

CITY OF NEWPORT NEWS

CITY OF NORFOLK

CITY OF PORTSMOUTH

CITY OF VIRGINIA BEACH

HAMPTON ROADS PLANNING DISTRICT COMMISSION

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

IN WITNESS THEREOF, the duly authorized Chief Administrative Officer of the Localities and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

HAMPTON ROADS PLANNING
DISTRICT COMMISSION

By: Dwight L. Farmer

Date: 2/14/14

Date: 2/14/14

Attest: Kyle Pitts

IN WITNESS THEREOF, the duly authorized Chief Administrative Officer of the Localities and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF CHESAPEAKE

By: _____

Date: 4/14/14

Date: 4/14/14

Attest: Delores A. Moore

APPROVED AS TO FORM

IN WITNESS THEREOF, the duly authorized Chief Administrative Officer of the Localities and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF HAMPTON

By: _____
Mary B. Bunting, City Manager

Date: 8/1/2014

Attest:

_____
Clerk of Council

Date: 8/4/14

CITY OF HAMPTON
OFFICE OF THE CITY ATTORNEY
Approved as to legal form and sufficiency
Date: 07.31.2014
_____
Attorney

Approved as to Content:

_____ 8/01/2014
Department of Public Works

IN WITNESS THEREOF, the duly authorized Chief Administrative Officer of the Localities and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF NEWPORT NEWS

By: James M. Bourey
City Manager

Date: 4/28/14

ATTEST:

Mabel Washington Jenkins
City Clerk

Date: 4-28-14

APPROVED AS TO FORM:

City Attorney

IN WITNESS THEREOF, the duly authorized Chief Administrative Officer of the Localities and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF NORFOLK

By: _____

Date: 3/10/14

Date: 3/12/14

Attest: _____
City Clerk

Approved as to Form & Correctness

_____
Cynthia B. Hall, Deputy City Attorney

IN WITNESS THEREOF, the duly authorized Chief Administrative Officer of the Localities and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF PORTSMOUTH

By: John L. Rowe

Date: MARCH 14, 2014

Date: 3/17/14

Attest: Debra Y. White

IN WITNESS THEREOF, the duly authorized Chief Administrative Officer of the Localities and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF VIRGINIA BEACH

By: James K. Spore

Date: July 10, 2014

Date: August 12, 2014

Attest: Amanda Jeffery, CMC
Chief Deputy City Clerk

APPROVED AS TO CONTENT:

Department of Public Works

APPROVED AS TO LEGAL SUFFICIENCY:

City Attorney's Office