

Hampton Roads Regional Stormwater Management Program

Memorandum of Agreement



HAMPTON ROADS PLANNING DISTRICT COMMISSION

DWIGHT L. FARMER

EXECUTIVE DIRECTOR/SECRETARY

CHESAPEAKE

AMAR DWARKANATH

JAMES E. BAKER

SCOTT MATHESON

DEBBIE RITTER

* ELLA P. WARD

FRANKLIN

* R. RANDY MARTIN

BARRY CHEATHAM

GLOUCESTER COUNTY

* BRENDA G. GARTON

CARTER BORDEN

HAMPTON

MARY BUNTING

WILL J. MOFFETT

* CHRISTOPHER STUART

ISLE OF WIGHT COUNTY

* W. DOUGLAS CASKEY

DELORES DARDEN

JAMES CITY COUNTY

* MARY K. JONES

ROBERT C. MIDDAUGH

NEWPORT NEWS

JAMES M. BOUREY

* MCKINLEY L. PRICE

SHARON P. SCOTT

NORFOLK

ANTHONY L. BURFOOT

* PAUL D. FRAIM

THOMAS R. SMIGIEL

MARCUS JONES

ANGELIA WILLIAMS

POQUOSON

W. EUGENE HUNT, JR.

* J. RANDALL WHEELER

PORTSMOUTH

JOHN L. ROWE, JR.

* KENNETH I. WRIGHT

SOUTHAMPTON COUNTY

* MICHAEL W. JOHNSON

BARRY PORTER

SUFFOLK

* SELENA CUFFEE-GLENN

LINDA T. JOHNSON

SURRY COUNTY

* TYRONE W. FRANKLIN

JOHN M. SEWARD

VIRGINIA BEACH

ROBERT M. DYER

BARBARA M. HENLEY

* LOUIS R. JONES

JOHN MOSS

AMELIA ROSS-HAMMOND

JAMES K. SPORE

JOHN E. UHRIN

WILLIAMSBURG

CLYDE A. HAULMAN

* JACKSON C. TUTTLE

YORK COUNTY

* JAMES O. McREYNOLDS

THOMAS G. SHEPPERD, JR.

*EXECUTIVE COMMITTEE MEMBER

PROJECT STAFF

RANDY R. KEATON

WHITNEY KATCHMARK

JENNIFER TRIBO

TIFFANY SMITH

MICHAEL LONG

CHRISTOPHER VAIGNEUR

JENNIFER COLEMAN

HRPDC DEPUTY EXECUTIVE DIRECTOR

PRINCIPAL WAER RESOURCES ENGINEER

SENIOR WATER RESOURCES PLANNER

WATER RESOURCES PLANNER

GENERAL SERVICES MANAGER

ASSISTANT GENERAL SERVICES MANAGER

ADMINISTRATIVE ASSISTANT

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

WHEREAS, Section 15.2-4200 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 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 (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 Code of Federal Regulations 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, 10.1-603.1, et. seq. of the Code of Virginia, 1950 As Amended, the Board of Soil and Water Conservation has promulgated implementing regulations 4 VAC 50-60, 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 expires on June 30, 2013,

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

This Memorandum of Agreement entered into this first day of July 2013, 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 five (5) year basis and the localities applied for renewed permits in 2005. Localities continue to operate programs under administratively continued permits. Permit renewals are expected in 2014.

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 five (5) year basis with the next renewal planned for 2013.

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, 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 must develop 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 state 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 aforementioned local governments have developed a consensus on regional goals to guide the operation of their stormwater management programs. Initially, approved by the HRPDC at its Executive Committee Meeting of September 15, 1999, they are:

1. Manage stormwater quantity and quality to the maximum extent practicable (MEP)
 - Implement best management practices (BMP) 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 is responsible for the following:

- 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 in order 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, which 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 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 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.

LOCAL GOVERNMENT RESPONSIBILITIES

Under the terms of the Agreement, the signatory local governments are responsible for the following:

- Appoint one voting member and alternates, as appropriate, to the Regional Environmental Advisory Committee to represent the local government stormwater and water quality related concerns. Generally, the voting representative should be the MS4 permit or program administrator.
- Appoint a representative and alternates, as appropriate, to the stormwater education subcommittee of 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 in regard to the state'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.
- 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.

METHOD OF FINANCING

Program costs will be allocated on a pro-rata basis among the local governments. Annual costs will be allocated according to a formula reflecting the local share of 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. The most current estimate of population developed by the Weldon Cooper Center for Public Service/Virginia Employment Commission will be used as the population base for allocating program costs. Local contributions may be adjusted on an annual basis to reflect program experience and projected program expenditures necessary to satisfy permit requirements and local needs. A locality will not be assessed for any services which it refuses in writing.

Individual local governments may request specific services from the HRPDC, which are in excess of the program elements common to all participants. The cost of such services will be borne by the requesting locality or localities.

Financial support from other entities, such as state and federal agencies, and the private sector, may be sought and obtained to support the activities of the Hampton Roads Regional Stormwater Management Program , to the extent that this may be accomplished without creating a conflict of interest, as determined by the signatory local governments..

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 Memorandum of 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 years, extending from the date of full execution of the renewed Agreement by the signatories or June 30, 2013, whichever occurs last through June 30, 2018. To conform to local government charter and Virginia Code requirements, the funding provisions of this Agreement will be subject to annual appropriations.

No later than January 1, 2018, 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 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 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 state (Virginia Department of Conservation and Recreation).

OWNERSHIP OF PROPERTY

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

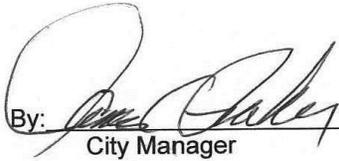
INDEMNITY

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.

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: 
City Manager

Date: 5/30/13

James City County

By: 

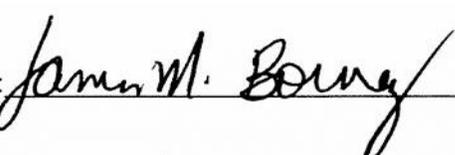
Date: 6/28/2012

City of Franklin

By: 

Date: 8/19/13

City of Newport News

By: 

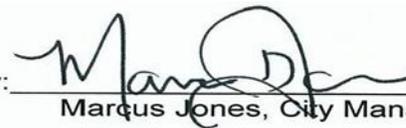
Date: 7/22/13

Gloucester County

By: 

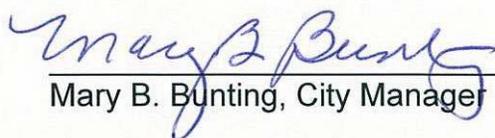
Date: July 3, 2013

City of Norfolk

By: 
Marcus Jones, City Manager

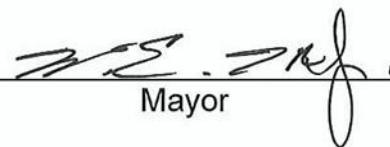
Date: 6/17/13

City of Hampton

By: 
Mary B. Bunting, City Manager

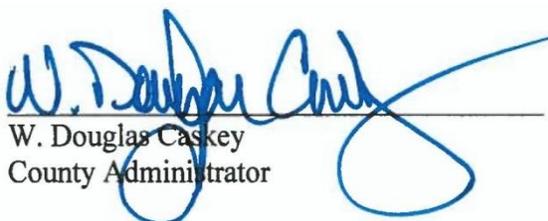
Date: 6/13/13

City of Poquoson

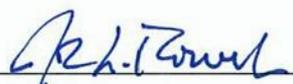
By: 
Mayor

Date: 4/22/13

Isle of Wight County

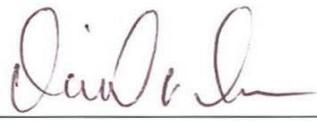

W. Douglas Caskey
County Administrator

City of Portsmouth

By: 

Date: July 16, 2013

Southampton County

By: 

Date: 8/28/2013

City of Williamsburg

By: 

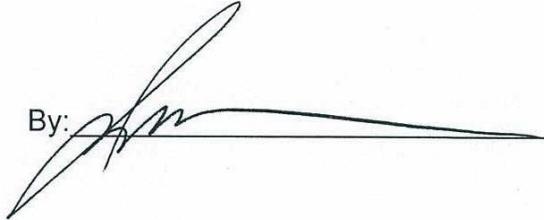
Date: 7/11/13

City of Suffolk

By: 

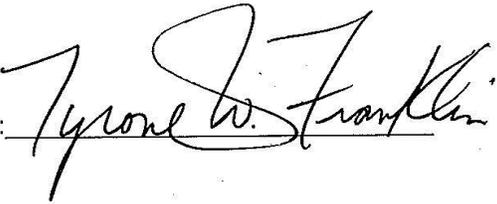
Date: 6/6/13

York County

By: 

Date: 6-14-13

Surry County

By: 

Date: 7-11-13

Town of Smithfield

By: 
Peter M. Stephenson
Smithfield Town Manager

Date: June 4, 2013

City of Virginia Beach

By: 
City Manager or Designee

Date: May 30, 2013

Hampton Roads Planning District Commission

By: 

Date: 9/11/13