

**WATER QUALITY CREDIT AGREEMENT
FOR CHESAPEAKE BAY TMDL IMPLEMENTATION**

THIS WATER QUALITY CREDIT AGREEMENT FOR CHESAPEAKE BAY TMDL IMPLEMENTATION (this “Agreement”) is made this _____ day of _____, 2018, by and between the Harrisonburg-Rockingham Regional Sewer Authority (“HRRSA”) and the City of Harrisonburg, Virginia (the “City”) (each a “Party” and jointly the “Parties”).

BACKGROUND

A. HRRSA’s North River Plant. HRRSA owns and operates an advanced wastewater treatment plant known as the North River Wastewater Treatment Facility (“North River WWTF”), which is authorized to discharge the nutrients total nitrogen (“TN”) and total phosphorus (“TP”) as well as sediment expressed as total suspended solids (“TSS”) within the Chesapeake Bay watershed in accordance with (a) certain water quality plans or regulations including the Chesapeake Bay Total Maximum Daily Load (“TMDL”) issued by the U.S. Environmental Protection Agency (“EPA”), the related Virginia Chesapeake Bay TMDL Watershed Implementation Plan (“WIP”) issued by the Commonwealth of Virginia, and the Water Quality Management Planning Regulation, 9 VAC 25-720, issued by the State Water Control Board and Virginia Department of Environmental Quality (jointly, “DEQ”), and (b) the General Virginia Pollutant Discharge Elimination System (“VPDES”) Watershed Permit Regulation for TN and TP Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia, 9 VAC 25-820, most recently reissued by DEQ effective February 8, 2017, as hereafter modified or reissued from time to time (the “Watershed General Permit”). Due to exceptional performance and current operating conditions, the North River WWTF currently discharges less TN, TP and TSS than authorized under the Watershed General Permit and Chesapeake Bay TMDL while protecting Chesapeake Bay water quality and, therefore, HRRSA has the ability to generate and supply TN, TP and TSS credits on at least a temporary basis.

B. The Harrisonburg MS4. The City owns and operates a municipal separate stormwater sewer system (“MS4”) authorized to discharge nutrients and sediment to the Chesapeake Bay watershed. Like the North River WWTF, the MS4 is addressed under the Chesapeake Bay TMDL and WIP. The MS4 is subject to the General VPDES Permit for Stormwater Discharged from Small Municipal Separate Storm Sewer Systems (the “MS4 Permit”) under which DEQ has issued coverage to the City. Pursuant to the Chesapeake Bay TMDL, WIP and MS4 Permit, it is anticipated that the City will reduce nutrient and sediment discharges from the MS4 pursuant to City-developed and DEQ-approved TMDL Action Plans for each of three, five-year permit cycles, which are referred to as the First Bay TMDL Permit Cycle (5% Progress), Second Bay TMDL Permit Cycle (40% Progress), and Third Bay TMDL Permit Cycle (100% Progress).

C. Legal Authority. Pursuant to Virginia Code § 62.1-44.19:21, the City may acquire and use nutrient credits for purposes of compliance with the Chesapeake Bay TMDL loading reductions of the MS4 Permit, including credits generated by HRRSA’s North River

WWTF by discharging less TN or TP than permitted under the Watershed General Permit. Pursuant to Virginia Code § 62.1-44.19:21.1, the City may also acquire and use sediment credits for purposes of compliance with the Chesapeake Bay TMDL loading reductions of the MS4 Permit, including credits generated by HRRSA's North River WWTF by discharging less TSS than allocated under the Chesapeake Bay TMDL and WIP. With respect to all three parameters, it is recognized that this authority does not limit or otherwise affect the authority of DEQ to establish and enforce more stringent water quality-based effluent limitations in permits where such limitations are necessary to protect local water quality and, further, that the use of water quality credits does not relieve an MS4 permit holder of any requirement to comply with any applicable local water quality-based limitations.

D. City's BMP Implementation Schedule. The City expects to achieve its Chesapeake Bay TMDL reduction goals for the Second Bay TMDL Permit Cycle in part by acquisition and use of TN, TP and TSS credits to be generated and supplied by HRRSA from its North River WWTF. This compliance method may act as an interim method of compliance and, as such, will conserve scarce state and local resources for other important water quality projects during the interim period.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises (hereby incorporated as if fully set forth herein), the mutual covenants and conditions herein, and other good and valuable consideration, the receipt and sufficiency of which HRRSA and the City acknowledge, the Parties hereby agree as follows.

1. Initial Credit Quantity. HRRSA agrees to sell to the City, and the City agrees to purchase from HRRSA 1115 lbs of TN, 73 lbs of TP, and 151,989 lbs of TSS credits generated by the North River WWTF as an initial agreed upon purchase. Further credit requests will be made in association with the annual credit request schedule outlined in Section 2. Unless approved by the HRRSA Board of Directors, the City's annual purchase of credits shall not exceed the City's percentage of ownership in HRRSA.

2. Annual Credit Request. HRRSA agrees to sell to the City, and the City agrees to purchase from HRRSA, TN, TP and TSS credits generated by the North River WWTF in accordance with the quantities established on the Credit Schedule set forth in Attachment A hereto. The City shall submit requested credit transfer quantities to HRRSA by June 15 each year using Attachment A. Requested credit transfer quantities will be reviewed by HRRSA and any needed revisions to Attachment A due to North River WWTF credit availability or other circumstances shall be communicated to the City within thirty (30) days of receipt. The City will establish requested credit transfer quantities to be purchased in 2023 by submitting Attachment A in 2019 and so on and so forth through 2024. For purposes of this Agreement, "credit" means a "point source nitrogen credit" or "point source phosphorus credit" as defined in the Watershed General Permit or "sediment credit" and as defined in Virginia Code § 62.1-44.19:21.1.

3. Annual Transfers. For each compliance year for which HRRSA has agreed to supply a specific quantity of credits to the City, HRRSA shall transfer such credits to the City by May 20 immediately following the compliance year (January 1 through December 31) during which HRRSA generated the credits. Such transfer shall be made in writing using the Water Quality Credit Transfer Form set forth in Attachment B hereto.

4. Annual Invoices. HRRSA shall submit an invoice to the City by May 20 for total credit purchase cost for the annual credit transfer based on the applicable annual credit prices set forth in Attachment A. The City shall pay the invoice in full within 30 days of the invoice date.

5. Authorized Use. The City agrees that its sole and limited use of the credits transferred under this Agreement shall be for the purpose of MS4 Permit compliance and Chesapeake Bay TMDL implementation and that it shall not transfer any portion of HRRSA-generated credits to any other person or entity.

6. Term. This Agreement shall be in effect as of the date first shown above upon execution by both Parties and shall expire on June 30, 2023. At least 120 days prior to such expiration date, the parties shall review this Agreement and may agree to a five year extension thereof. Notwithstanding the preceding sentence, if either Party fails to perform a material obligation hereunder, and fails to cure such failure to perform within thirty (30) days of written notice from the non-defaulting Party, the non-defaulting Party may terminate this Agreement upon written notice to the other Party.

7. Regulatory Plans & Approvals. In furtherance of this Agreement, the Parties shall collaborate on appropriate submittals to and requests from DEQ as set forth in this paragraph.

a. City's TMDL Action Plan. For purposes of annual credit transfers, the City shall include in its Chesapeake Bay TMDL Action Plan a provision for the receipt and use of TN, TP and TSS credits from the North River WWTF in the form set forth in Attachment C hereto (or such other provision or provisions as may be mutually agreeable to the City and HRRSA).

b. Exchange Compliance Plan. HRRSA is a member of the Virginia Nutrient Credit Exchange Association (the "Nutrient Exchange") and a participant in its Exchange Compliance Plan previously submitted by the Nutrient Exchange to, and approved by, DEQ pursuant to the Watershed General Permit. During the next annual update of the Exchange Compliance Plan due to DEQ on or before February 1, 2023 or applicable annual update HRRSA shall notify the Nutrient Exchange of the credit transfer provided by this Agreement and instruct the Nutrient Exchange to account for such transfer in next Exchange Compliance Plan annual update.

c. TMDL & WIP Updates. Upon the request of either Party, the Parties agree to collaboratively seek continuing acceptance of the type of annual credit transfers contemplated by this Agreement in any update or revision by EPA to the Chesapeake Bay TMDL or by the Commonwealth of Virginia to its Chesapeake Bay TMDL WIP.

8. Further Cooperation. The Parties shall continue to cooperate with each other as reasonably necessary to confirm or bring about the transfers contemplated by this Agreement.

9. Force Majeure. The obligations of HRRSA, including its credit transfer obligations, shall be suspended while and as long as performance is prevented or impeded by (a) strikes, disturbances, riots, fire, severe weather, acts of war, acts of terrorism, acts of God, government action (other than by HRRSA), major technical, engineering or construction related delays, or any other cause similar or dissimilar to the foregoing that is beyond the reasonable

control of and not due to the negligence of HRRSA; (b) any facts or circumstances that qualify as an Extraordinary Condition within the meaning of the Water Quality Improvement Grant Agreement by and between DEQ and HRRSA for the nutrient removal technology upgrade of the North River WWTF; or (c) any facts or circumstances that qualify as an Upset within the meaning of the VPDES Permit Regulation, 9 VAC 25-31, or any permits issued thereunder to the North River WWTF. For clarity, HRRSA assumes no obligation under this Agreement to install, upgrade, improve, or alter the operation of any of its facilities for purposes of providing credits to the City.

10. Change in Law. In the event of any material change in applicable laws or regulations, the Parties shall work together to attempt to amend this Agreement to conform to such change, while maintaining as closely as practicable the provisions and intent of this Agreement. If in any such event HRRSA is unable to transfer credits as provided herein, the City shall be solely responsible for otherwise meeting its TMDL and MS4 Permit obligations.

11. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their permitted successors and assigns and shall not confer any rights or benefits on any other person or entity.

12. No Assignment. No Party may transfer or assign this Agreement, or its rights or obligations hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

13. Expenses; Commissions. Each Party shall pay its own fees and expenses, including its own counsel fees, incurred in connection with this Agreement or any transaction contemplated hereby.

14. Governing Law; Venue; Severability. This Agreement is a Virginia contract that shall be construed in accordance with and governed for all purposes by the laws of the Commonwealth of Virginia. This Agreement is deemed executed and accepted in Rockingham County and all questions with respect to any of its provisions shall be instituted, maintained, and contested in a court of competent jurisdiction in Rockingham County or the U.S. District Court for the Western District of Virginia. If any word or provision of this Agreement as applied to any Party or to any circumstance is adjudged by a court to be invalid or unenforceable, the same shall in no way affect any other circumstance or the validity or enforceability of any other word or provision.

15. No Waiver. Neither any failure to exercise or any delay in exercising any right, power or privilege under this Agreement by either Party shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege hereunder preclude the exercise of any other right, power or privilege. No waiver of any breach of any provision shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision, nor shall any waiver be implied from any course of dealing.

16. Entire Agreement; Amendments. This Agreement contains the entire agreement between the Parties as to the subject matter hereof and supersedes all previous written and oral negotiations, commitments, proposals and writings. No amendments may be made to this Agreement except by a writing signed by both Parties.

17. Counterparts; Signatures; Copies. This Agreement may be executed in counterparts, both of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or scanned signature may substitute for and have the same legal effect as an original signature. Any copy of this executed Agreement made by photocopy, facsimile or scanner shall be considered the original for all purposes.

18. Authorization. Each Party represents that its execution, delivery and performance under this Agreement have been duly authorized by all necessary action on its behalf, and do not and will not violate any provision of its enabling legislation, charter, ordinances, articles of incorporation, bylaws, or regulations, as applicable, or result in a material breach of or constitute a material default under any agreement, indenture, or instrument of which it is a party or by which it or its properties may be bound or affected. To each Party's knowledge there are no actions, suits or proceedings, pending or threatened against such Party or any of its properties, before any court or governmental authority that, if determined adversely to such Party, would have a material adverse effect on the transactions contemplated by this Agreement.

19. Termination Due to Unavailability of Funds. This Agreement is made subject to the appropriation of funds by the Harrisonburg City Council and shall be null and void in the event of non-appropriation by the City Council. Non-appropriation of funds shall not be deemed a cancellation and shall terminate this Agreement without recourse and with no liability on the part of the City.

IN WITNESS WHEREOF, the Parties hereto have caused the execution of this Agreement as of the date first written above.

**HARRISONBURG-ROCKINGHAM
REGIONAL SEWER AUTHORITY**

By: _____
Sharon G. Foley, P.E.
Executive Director

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**SIGNATURE PAGE OF WATER QUALITY CREDIT AGREEMENT
FOR CHESAPEAKE BAY IMPLEMENTATION BY AND BETWEEN
HARRISONBURG-ROCKINGHAM REGIONAL SEWER AUTHORITY
AND CITY OF HARRISONBURG**

CITY OF HARRISONBURG

By: _____
Eric Campbell
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT

**WATER QUALITY CREDIT AGREEMENT
FOR CHESAPEAKE BAY TMDL IMPLEMENTATION
ATTACHMENT B**

WATER QUALITY CREDIT TRANSFER FORM

Instructions: This form is to be completed and executed by HRRSA and delivered to the City on or before each May 20 immediately following the calendar year of credit generation by HRRSA. This form, as completed by HRRSA, shall constitute HRRSA's annual invoice pursuant to Paragraph 3 of the Water Quality Credit Agreement for Chesapeake Bay TMDL Implementation. Payment is due within 30 days of the invoice date ("Date Transferred" below).

By execution and delivery of this Water Quality Credit Transfer Form, the following water quality credits, in the amounts specified below, are hereby transferred in accordance with, and for the specific and limited purposes of, the Water Quality Credit Agreement for Chesapeake Bay TMDL Implementation by and between Harrisonburg-Rockingham Regional Sewer Authority and the City of Harrisonburg, Virginia.

Transferor: Harrisonburg-Rockingham Regional Sewer Authority

Transferee (MS4): City of Harrisonburg, Virginia

TN Credit Quantity: pounds TP

Credit Quantity: pounds TSS

Credit Quantity: pounds

Year Generated: _____

Date Transferred: _____

Amount Due: _____

Signed (for HRRSA): _____

Name (Print): _____

Title: _____

PLEASE REMIT PAYMENT TO:

Harrisonburg-Rockingham Regional Sewer Authority
P.O. Box 8
856 North River Rd
Mount Crawford, Virginia 22841

**WATER QUALITY CREDIT AGREEMENT
FOR CHESAPEAKE BAY TMDL IMPLEMENTATION
ATTACHMENT C**

**MS4 CHESAPEAKE BAY TMDL ACTION PLAN PROVISION
FOR USE OF HRRSA-GENERATED WATER QUALITY CREDITS**

The City of Harrisonburg ultimately intends to achieve and maintain its Chesapeake Bay TMDL reduction goals for the Second Bay TMDL Permit Cycle (2013-2018) of its MS4 Permit by implementation of certain best management practices (“BMPs”). The originally planned schedule, which had assumed BMP completion before the City’s June 2018 compliance deadline, has proven to be infeasible due to difficulties in acquiring the necessary easement from the property owner. Therefore, the BMP implementation schedule is revised in this TMDL Action Plan Update and is now assumed to run through December 2022.

Under this TMDL Action Plan Update, the City will achieve and maintain compliance during the Second Bay TMDL Permit Cycle by acquisition and use of water quality credits in accordance with Virginia Code §62.1-44.19:21 (nutrient credit use by MS4s) and §62.1-44.19:21.1 (sediment credit use by MS4s).

The credits will be generated by operation of advanced treatment technology at the North River Wastewater Treatment Facility (“North River WWTF”). This facility is owned and operated by the Harrisonburg-Rockingham Regional Sewer Authority (“HRRSA”) of which the City is a member jurisdiction.

The quantity of water quality credits to be generated by the North River WWTF (by each December 31 for North River WWTF compliance (calendar) years 2022, 2023, 2024, 2025, 2026, and 2027) and transferred to the City (by each May 20 immediately following the close of each North River WWTF compliance year) for purposes of this TMDL Action Plan Update and associated MS4 Permit.

The generation and use of water quality credits prior to implementation of the planned BMPs is assured by the documented performance of the North River WWTF and the Water Quality Credit Agreement for Chesapeake Bay TMDL Implementation executed by and between the City and HRRSA.