

**CONSIDERATION OF AN AMENDMENT TO THE
APPOMATTOX RIVER WATER AUTHORITY SERVICE AGREEMENT**

Several years ago, Prince George County began negotiations to purchase a portion of Petersburg's unused water allocation from ARWA in order to provide water capacity for future economic development in Prince George. In a surprise to all the members of ARWA, ARWA's attorney ruled that the existing water agreement does not create ownership by any of the member jurisdictions of any portion of the treated water. Over the years, individual members had paid for the expansion of the water treatment plant expecting to "own" the portion of the expanded plant that they had paid for.

During this time, the County Utilities Department determined that the County could not be assured that ARWA could actually deliver additional water to the County unless the Branders Bridge pump station and storage facility was built. The Branders Bridge project had been identified by ARWA's engineers as a necessary component of the Temple Avenue transmission line for over 40 years but, for whatever reason, was never built.

At the May 18, 2017 ARWA meeting, by a vote of three in favor, two against, the Authority approved the attached amendment to the ARWA Service Agreement which creates an ownership interest in a percentage of ARWA water as determined by prior contributions (See Attachment). The amendment also allows localities to sell unused portions of their allocation to other member jurisdictions.

In order for this Service Agreement amendment to become effective, the governing body of each jurisdiction in ARWA must approve the amendment to the Service Agreement.

FOURTH AMENDMENT TO
1964 Service Agreements
between
Appomattox River Water Authority
and
Participating Jurisdictions of
County of Chesterfield
City of Colonial Heights
County of Dinwiddie
City of Petersburg
County of Prince George

THIS FOURTH AMENDMENT to the WATER SERVICE AGREEMENT (this "Agreement") is made and entered into as of _____, 2017, by and between the **APPOMATTOX RIVER WATER AUTHORITY ("ARWA")**, the **COUNTY OF CHESTERFIELD, VIRGINIA ("Chesterfield")**, the **CITY OF COLONIAL HEIGHTS, VIRGINIA ("Colonial Heights")**, the **COUNTY OF DINWIDDIE, VIRGINIA ("Dinwiddie")**, the **CITY OF PETERSBURG, VIRGINIA ("Petersburg")** and the **COUNTY OF PRINCE GEORGE, VIRGINIA ("Prince George")**.

RECITALS:

WHEREAS, ARWA is a public body politic and corporate created in 1960 by agreement of the governing bodies of Chesterfield, Colonial Heights, Dinwiddie, Petersburg and Prince George (collectively, the "Participating Jurisdictions" and each a "Participating Jurisdiction"), and in accordance with the Virginia Water and Waste Authorities Act, Virginia Code § 15.2-5100, et seq. (the "Act"), for the purpose of serving the water needs of the Participating Jurisdictions; and

WHEREAS, it was intended that ARWA would wholesale finished water to the Participating Jurisdictions and each Participating Jurisdiction would in turn retail the finished water to the individual service connections served by such Participating Jurisdiction; and

WHEREAS, ARWA and the Participating Jurisdictions entered into Service Agreements dated August 28, 1964, between ARWA and Petersburg, September 8, 1964, between ARWA and Prince George, September 9, 1964, between ARWA and Chesterfield, September 9, 1964, between ARWA and Dinwiddie, and September 15, 1964, between ARWA and Colonial Heights, all as collectively amended by ARWA and the Participating Jurisdictions pursuant to the Amendment to 1964 Service Agreements, dated December 20, 1982, the Modification Agreement, dated as of September 1, 1983, the Second Amendment to 1964 Service Agreements, dated August 15, 1986, and the Third Amendment to 1964 Service Agreements, dated August 22, 2001 (collectively, the "Original Service Agreements"); and

WHEREAS, the Original Service Agreements did not provide for, among other things, the sale and ownership of finished water allocations between the Participating Jurisdictions,

WHEREAS, the Board of Directors of ARWA (the "ARWA Board") and the governing bodies of the Participating Jurisdictions have determined to amend the Original Service Agreements to (i) facilitate planning for the economic development of each Participating Jurisdiction and (ii) allow each Participating Jurisdiction to realize the full benefit of the capacity for which it has paid and will continue to pay by, among other things, enabling the Participating Jurisdiction to have capacity rights that may be transferred, either permanently or temporarily, to other Participating Jurisdictions; and

~~**WHEREAS**, the ARWA Board has determined to amend the Original Service Agreements to enable a Participating Jurisdiction to sell and/or assign all or a portion of Treatment Plant Allocation, while maintaining the original purposes of the Original Service Agreements; and~~

NOW, THEREFORE, the parties hereto agree ~~that nothing as follows:~~

1. ARWA and each of the Participating Jurisdictions agree that from the date hereof (i) the Allocations of Total Capacity determined pursuant to the Original Service Agreements are fixed and constitute property rights owned by the respective Participating Jurisdictions and (ii) no increase in any Participating Jurisdiction's Capacity Demand may cause an increase in the Participating Jurisdiction's Allocation of Total Capacity. ARWA shall use its best efforts to protect each Participating Jurisdiction's Allocation of Total Capacity and enforce the restriction on increases in Capacity Demand. Each Participating Jurisdiction shall have all rights and remedies permitted under law to protect its Allocation of Total Capacity and enforce the restriction on any increase in Capacity Demand by any other Participating Jurisdiction.

2. On the date hereof, the Allocations of Total Capacity are as follows:

<u>Chesterfield County</u>	<u>69.31%</u>
<u>Colonial Heights</u>	<u>4.39</u>
<u>Dinwiddie County</u>	<u>6.75</u>
<u>City of Petersburg</u>	<u>16.69</u>
<u>Prince George County</u>	<u>2.86</u>
	<u>100%</u>

3. Nothing in the Original Service Agreements or herein shall prevent or restrict any one or more of the Participating Jurisdictions from entering into separate agreements with any one or more of the other Participating Jurisdictions to ~~create ownership rights in the Allocations of Total Capacity and buying and selling~~ buy or sell, on a permanent or temporary basis, ~~such ownership rights~~ portions of the Allocations of Total Capacity. The Participating Jurisdictions entering into such agreements shall give ARWA written notice thereof and ARWA shall note in its records any permanent or temporary transfer of an Allocation of Total Capacity and, to the extent permitted by law, cooperate in the enforcement of the provisions of such agreements by, among other things, limiting a selling ARWA shall note in its books and records the changes in each Participating Jurisdiction's Capacity Demand to the level of its remaining Allocation of Total Capacity and set rates and otherwise administer the Original Service Agreements in accordance with the revised Allocations of Total Capacity.

IN WITNESS WHEREOF, ARWA and each Participating Jurisdiction has caused their respective corporate seals to be hereunto affixed and attested, and these presents to be signed by their respective officers thereunto ~~duly authorizes this AMENDMENT TO the 1964 Service Agreement to be dated~~ as of the date and year first above written.

APPOMATTOX RIVER WATER AUTHORITY

By: _____

Chairman

ATTEST:

Secretary

CITY OF PETERSBURG, VIRGINIA

By: _____

Mayor

ATTEST:

Secretary

COUNTY OF CHESTERFIELD, VIRGINIA

By: _____

Chair, Board of Supervisors

ATTEST:

Secretary

CITY OF COLONIAL HEIGHTS, VIRGINIA

By: _____

Mayor

ATTEST:

Secretary

COUNTY OF DINWIDDIE, VIRGINIA

By: _____

Chair, Board of Supervisors

ATTEST:

Secretary

COUNTY OF PRINCE GEORGE, VIRGINIA

By: _____

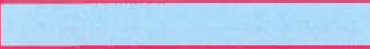




Chair, Board of Supervisors

ATTEST:

Secretary

Document comparison by Workshare Compare on Tuesday, March 14, 2017
5:06:01 PM

Input:	
Document 1 ID	interwovenSite://DMSPROXY/Active/87944769/1
Description	#87944769v1<Active> - Fourth Amendment to 1964 Service Agreements
Document 2 ID	interwovenSite://DMSPROXY/Active/87944769/2
Description	#87944769v2<Active> - Fourth Amendment to 1964 Service Agreements
Rendering set	MW Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	17
Deletions	8
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	27

FOURTH AMENDMENT TO
1964 Service Agreements
between
Appomattox River Water Authority
and
Participating Jurisdictions of
County of Chesterfield
City of Colonial Heights
County of Dinwiddie
City of Petersburg
County of Prince George

THIS FOURTH AMENDMENT to the WATER SERVICE AGREEMENT (this "Agreement") is made and entered into as of _____, 2017, by and between the **APPOMATTOX RIVER WATER AUTHORITY ("ARWA")**, the **COUNTY OF CHESTERFIELD, VIRGINIA ("Chesterfield")**, the **CITY OF COLONIAL HEIGHTS, VIRGINIA ("Colonial Heights")**, the **COUNTY OF DINWIDDIE, VIRGINIA ("Dinwiddie")**, the **CITY OF PETERSBURG, VIRGINIA ("Petersburg")** and the **COUNTY OF PRINCE GEORGE, VIRGINIA ("Prince George")**.

RECITALS:

WHEREAS, ARWA is a public body politic and corporate created in 1960 by agreement of the governing bodies of Chesterfield, Colonial Heights, Dinwiddie, Petersburg and Prince George (collectively, the "Participating Jurisdictions" and each a "Participating Jurisdiction"), and in accordance with the Virginia Water and Waste Authorities Act, Virginia Code § 15.2-5100, et seq. (the "Act"), for the purpose of serving the water needs of the Participating Jurisdictions; and

WHEREAS, it was intended that ARWA would wholesale finished water to the Participating Jurisdictions and each Participating Jurisdiction would in turn retail the finished water to the individual service connections served by such Participating Jurisdiction; and

WHEREAS, ARWA and the Participating Jurisdictions entered into Service Agreements dated August 28, 1964, between ARWA and Petersburg, September 8, 1964, between ARWA and Prince George, September 9, 1964, between ARWA and Chesterfield, September 9, 1964, between ARWA and Dinwiddie, and September 15, 1964, between ARWA and Colonial Heights, all as collectively amended by ARWA and the Participating Jurisdictions pursuant to the Amendment to 1964 Service Agreements, dated December 20, 1982, the Modification Agreement, dated as of September 1, 1983, the Second Amendment to 1964 Service Agreements, dated August 15, 1986, and the Third Amendment to 1964 Service Agreements, dated August 22, 2001 (collectively, the "Original Service Agreements"); and

WHEREAS, the Original Service Agreements did not provide for, among other things, the sale and ownership of finished water allocations between the Participating Jurisdictions,

WHEREAS, the Board of Directors of ARWA (the "ARWA Board") and the governing bodies of the Participating Jurisdictions have determined to amend the Original Service Agreements to (i) facilitate planning for the economic development of each Participating Jurisdiction and (ii) allow each Participating Jurisdiction to realize the full benefit of the capacity for which it has paid and will continue to pay by, among other things, enabling the Participating Jurisdiction to have capacity rights that may be transferred, either permanently or temporarily, to other Participating Jurisdictions; and

NOW, THEREFORE, the parties hereto agree as follows:

1. ARWA and each of the Participating Jurisdictions agree that from the date hereof (i) the Allocations of Total Capacity determined pursuant to the Original Service Agreements are fixed and constitute property rights owned by the respective Participating Jurisdictions and (ii) no increase in any Participating Jurisdiction's Capacity Demand may cause an increase in the

Participating Jurisdiction's Allocation of Total Capacity. ARWA shall use its best efforts to protect each Participating Jurisdiction's Allocation of Total Capacity and enforce the restriction on increases in Capacity Demand. Each Participating Jurisdiction shall have all rights and remedies permitted under law to protect its Allocation of Total Capacity and enforce the restriction on any increase in Capacity Demand by any other Participating Jurisdiction.

2. On the date hereof, the Allocations of Total Capacity are as follows:

Chesterfield County	69.31%
Colonial Heights	4.39
Dinwiddie County	6.75
City of Petersburg	16.69
Prince George County	<u>2.86</u>
	100%

3. Nothing in the Original Service Agreements or herein shall prevent or restrict any one or more of the Participating Jurisdictions from entering into separate agreements with any one or more of the other Participating Jurisdictions to buy or sell, on a permanent or temporary basis, portions of the Allocations of Total Capacity. The Participating Jurisdictions entering into such agreements shall give ARWA written notice thereof and ARWA shall note in its records any permanent or temporary transfer of an Allocation of Total Capacity and ARWA shall note in its books and records the changes in each Participating Jurisdiction's Allocation of Total Capacity and set rates and otherwise administer the Original Service Agreements in accordance with the revised Allocations of Total Capacity.

IN WITNESS WHEREOF, ARWA and each Participating Jurisdiction has caused their respective corporate seals to be hereunto affixed and attested, and these presents to be signed by their respective officers thereunto as of the date and year first above written.

APPOMATTOX RIVER WATER AUTHORITY

By: _____

Chairman

ATTEST:

Secretary

CITY OF PETERSBURG, VIRGINIA

By: _____

Mayor

ATTEST:

Secretary

COUNTY OF CHESTERFIELD, VIRGINIA

By: _____

Chair, Board of Supervisors

ATTEST:

Secretary

CITY OF COLONIAL HEIGHTS, VIRGINIA

By: _____

Mayor

ATTEST:

Secretary

COUNTY OF DINWIDDIE, VIRGINIA

By: _____

Chair, Board of Supervisors

ATTEST:

Secretary

COUNTY OF PRINCE GEORGE, VIRGINIA

By: _____

Chair, Board of Supervisors

ATTEST:

Secretary