

WATER AGREEMENT
CITY OF PETERSBURG - COUNTY OF PRINCE GEORGE

THIS AGREEMENT, made and entered into in duplicate this 14th day of August, 1984, by and between the City of Petersburg, a municipal corporation of the Commonwealth of Virginia (hereinafter referred to as "City"), and the County of Prince George, a municipal corporation of the Commonwealth of Virginia (hereinafter referred to as "County");

R E C I T A L S

WHEREAS, the City owns and operates a water supply system located in the City; and

WHEREAS, the County wishes to be provided with water service from the City's water supply for the purpose of serving the Ft. Hayes Development which contains approximately 14-1/2 acres, 7-1/2 acres, more or less, of which lies within the County; and

WHEREAS, each unit within the Ft. Hayes Development lying in the County of Prince George shall have its own meter to monitor water consumption; and

WHEREAS, it is the intention of the City to supply water to the aforesaid Ft. Hayes Development lying within the County;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the City and the County do hereby mutually covenant and agree as follows:

SECTION 1 - DEFINITION

The definitions of pertinent words and terms in this Agreement shall be as follows:

(a) "Average Daily Water Supply" shall mean the total flow of water from the City's water supply system to the County during the billing month and the two preceding months divided by the number of days in those three months (expressed in million gallons per day).

(b) "MGD" shall mean million gallons per day. "GPD" shall mean gallons per day. "GPM" shall mean gallons per minute.

(c) "Person" shall mean any and all person(s), natural or artificial including any individual, corporation, firm, company, industry, municipality or private corporation.

(d) "Water Service Charge" shall mean the charge imposed upon the County for the City providing water supplies pursuant to the prevailing rates set forth in the Water Use Ordinance.

(e) "Water Use Ordinance" shall mean Chapter 38 of the 1982 Code of the City of Petersburg, Virginia, and any amendments or additions thereto, whether before or after the effective date of this agreement. A copy of the Water Use Ordinance is attached hereto as Appendix 1.

SECTION 2 - TERM OF AGREEMENT

The term of this agreement shall be for a period of twenty-five (25) years, commencing upon the date of the execution of this agreement by all parties hereto, and shall be automatically renewed for a similar term at the expiration of the original term unless notice by the County to the City is given of its intention to terminate this agreement. Notwithstanding any of the foregoing provisions of this Section of this Agreement, it is understood by and between the County or Prince George and the City of Petersburg that in the event the County becomes able and desires to furnish that portion of the Ft. Hayes Development within the County of Prince George with water, this contract may be terminated.

SECTION 3 - CONNECTION POINTS

Water supplied to the County hereunder shall be provided by the City through the City's water supply system located on or near Flank Road within the City, and shall be known as the "Flank Road Connection". It is contemplated by this agreement that an extension of the City's water system located on the west side of Flank Road shall be constructed by the developers of the aforesaid Ft. Hayes Development to serve said development. It is further understood and agreed that this agreement contemplates service only to the Ft. Hayes Development, and no additional connection shall be allowed without prior written approval of the City.

SECTION 4 - QUANTITY LIMITATIONS, MEASUREMENT AND SAMPLINGS

A. Quantity Limitations

The City's obligations to supply water to the approved connection points of the County as provided herein is subject to the following quantity limitations:

Average Daily Water Supply (MGD) 0.021

Maximum Instantaneous Water Supply (MGD) 2.0

If the water supplied to the County reaches or exceeds 80 percent of the above limitations for Average Daily Water Supply for the Flank Road Connection then the County shall request an amendment to this Agreement authorizing an increase in the applicable limitation(s) and the City and the County shall promptly enter into negotiation for this purpose; provided, however, the City shall not be obligated to increase any of the above limitations.

If the water supplied to the County exceeds the above limitations for Average Daily Water Supply for the Ft. Hayes Development, then the County shall pay, for that quantity on which the water exceeds the applicable limitations, a water service charge computed in accordance with the rate schedule set forth in the Water Use Ordinance.

In addition, if the Maximum Instantaneous Water Supply rate by the County exceeds the above limitations for the Flank Road Connection, then the County shall pay a surcharge equal to 10% of the sum of the operating and maintenance charges for that month as computed in accordance with Section 5.

The County shall be assessed a surcharge once within any twenty-four hour period for any time the Maximum Instantaneous Water supply rate exceeds above limitations. Such surcharge shall be in addition to (1) any water service charge assessed against the County pursuant to Subsection 4A and (2) the monthly operating and maintenance charges payable pursuant to Section 5.

In addition, if the water supplied to the County for the Ft. Hayes Development exceeds the above limitations for Average Daily Water Supply flow, then the County shall not permit any new connections to the County's water supply system without the City's prior written approval. If the water supplied to the Ft. Hayes Development exceeds any of the above limitations, such exceedances shall not be deemed to obligate or require the City to supply water to the County (or any person(s) supplied with water by the County from the County's water supply system) that exceeds any of the above limitations.

The above remedies shall be in addition to such other rights and remedies, civil and criminal, as the City may have at law or in equity.

B. Measurement

The City shall provide, maintain and operate a recording

meter at the connection point to measure and record the water supply flow to the County from the City's water supply system. The County shall be responsible for the payment of repair charges or replacement charges to this meter. The County shall keep all meter data on file for customers of the County's water supply system who are served by the Flank Road Connection. The meter data shall be available for inspection and audit by the City at all times. If the meter at the Ft. Hayes Development connection point becomes inoperative, the water supply flow at that connection point shall be based on the total water supply flow obtained by reading all of the meters serving each individual unit within the Ft. Hayes Development in the County of Prince George, or an average of the previous three months meter readings, whichever is greater.

C. Sampling.

Unless otherwise specified herein, the City may, to the extent practical, take water samples from any customer of the County's water supply system at the Flank Road Connection. Moreover, the City can inspect the individual dwelling units for cross connection control.

SECTION 5 - SERVICE FEES

The County shall pay the City service fees for water quantity supplied by the City to the Ft. Hayes Development at rates as established by the City's Water Use Ordinance, as may be amended from time to time. Such amendments shall be binding upon the County and shall become effective as specified by the City's ordinance. Fees based upon average usage of individual dwelling units shall apply in accordance with the City's Water Use Ordinance.

SECTION 6 - INVOICES AND PAYMENT

The City shall prepare and submit a monthly invoice to the County for payment of all charges payable by the County hereunder. The County shall pay the amount invoiced within 30 days after the date of the issuance of such invoice. Failure to pay any invoice within 30 days of the date of issuance shall cause the County to be liable for a late charge of 10% of the unpaid amount

SECTION 7 - REPORTS AND RECORDS

The City shall keep accurate and complete books of account, records, documents and other evidence related to this agreement or any modification hereto. The County may examine such accounts, records, documents and other evidence at a mutually

agreed upon time in order to ascertain the correctness of the computation of compensation and other charges called for by this agreement.

The City shall have such audit and inspection rights as are specified elsewhere in this agreement.

If an inspection by either the City or the County reveals an error or irregularity in the charges paid or payable by the County hereunder, then (1) if such error results in an overpayment to the City, the City shall, at its option, refund the amount of such overpayment to the County within 30 days after receiving notice of the error, or deduct this amount from the amount the County owes the City in the next billing period, or (2) if such error results in an underpayment to the City, the County shall pay this amount within 30 days after receiving notice of the error.

SECTION 8 - THIRD PARTY BENEFICIARY

Nothing herein contained shall be construed as giving any third party any rights, and no action based on a contractual theory of recovery may be brought against either party hereto by any third party claiming as a third party beneficiary to this agreement.

SECTION 9 - ASSIGNMENT

Neither the City nor the County shall assign any rights or delegate any decision or obligations hereunder, nor transfer or otherwise dispose of this agreement or any part hereof, or any of the respective rights, title and interest herein, except with the prior written consent of the other. Any assignment by the City or the County made without the written consent of the other shall be null and void. No assignment of this agreement by the City or the County so consented to shall relieve either of its responsibilities for the due and full performance hereof. The City and the County shall be liable each to the other for all acts and omissions of its assignees or other transferees.

SECTION 10 - CORRESPONDENCE AND NOTICES

All copies or certificates, notices, correspondence and invoices issued pursuant to this agreement shall be in writing and addressed to:

City's Representative

Director of Public Utilities
900 Magazine Road
Petersburg, Virginia 23803

County's Representative

County Administrator
Prince George Courthouse
Prince George, Virginia 23875

Any notice or communication required to be given hereunder shall be given by registered or certified or first class mail (postage prepaid). The date of receipt of such notices as may be sent by mail shall be the date the notice shall be deemed to have been given.

SECTION 11 - APPLICABLE LAW

This agreement and the rights of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Virginia.

SECTION 12 - WAIVER

The failure of the City or the County to enforce from time to time a strict adherence to any of the provisions hereof, or their failure to exercise any of their rights hereunder, shall not be construed as a waiver of any such rights, or a consent to any continuing or subsequent failure or breach by either the County or the City.

SECTION 13 - AMENDMENTS

No modifications of or changes or amendments to any of the provisions herein shall be valid unless agreed to in writing and signed by the governing bodies of both the County and the City.

SECTION 14 - SEVERABILITY

In the event any provision or any part of any provision hereof shall be held to be invalid, void or otherwise unenforceable, the obligations of the parties shall be reduced only as much as is required to remove the illegality.

SECTION 15 - SURVIVAL

Neither expiration, termination or cancellation of this agreement by the City or the County shall be deemed to relieve either of any obligation hereunder that by its nature survives expiration, termination or cancellation, including but not limited to all warranties, guarantees and promises of indemnity.

SECTION 16 - HEADINGS

Section and subsection headings contained herein are inserted for convenience and shall have no effect on the interpretation or construction of this agreement.

SECTION 17 SUCCESSORS AND ASSIGNS

This agreement shall be binding on the parties hereto and their directors, officers, employees, agents, successors and assigns.

SECTION 18 - AGREEMENT

This agreement embodies the entire agreement between the City and the County with respect to the subject matter hereof. The parties shall not be bound by or be liable for any statement, representation, promise, warranty, inducement or understanding of any kind or nature not set forth or provided for herein.

SECTION 19 - DEFINITION OF "TO SUPPLY WATER"

Notwithstanding any provision of this agreement, the term "to supply water" shall mean, for the purposes of interpretation of this agreement, only water supplied to the portion of Ft. Hayes Development that lies within Prince George County.

SECTION 20 - LIMITATIONS OF AGREEMENT

Nothing contained herein shall be construed to impose on the County of Prince George any conditions, restrictions or requirements outside the area of the Ft. Hayes Development lying within the County of Prince George.

IN WITNESS WHEREOF, the City has caused this agreement to be signed in its corporate name by its City Manager, and its seal to be affixed and attested by the Clerk of the Council, pursuant to the resolution duly adopted by the City Council; and the County has caused this agreement to be signed by the Chairman of the Board of Supervisors, as duly authorized, and its seal to be affixed and attested by its Clerk, as of the date first above written.

CITY OF PETERSBURG

By Richard M. Brown
City Manager

ATTEST:

Barbara A. Inoué
Clerk of Council

PRINCE GEORGE COUNTY

By Samuel A. Blend
Chairman, Board of Supervisors

ATTEST:

James A. Quirk
Clerk