

Issue Analysis Form



Date: June 14, 2022

Item: Authorization to Enter into an Agreement with Chappell Creek, LLC for the Pro Rata Share Contribution towards Public Water Infrastructure Improvements for the Chappell Creek Subdivision

Lead Department(s): Engineering & Utilities

Contact Person(s): Frank Haltom

Description and Current Status

Chappell Creek, LLC, a subsidiary of Boyd Homes, is the developer for the Chappell Creek development, a 98-lot residential subdivision that requires public utility infrastructure improvements. The subdivision, approved in 2013, included the construction of a 500,000-gallon elevated water storage tank within the development and allowed a temporary connection of the first 20 homes to the Beechwood Manor community well system.

Boyd Homes submitted a revised subdivision plan for review in 2019. Since the prior approval, the 2016 Water and Sewer Master Plan was completed, which identified locations for future water tanks. The Master Plan suggested the approved tank within the subdivision was not ideally located, and that a second tank would be required to support the future growth of the area. To avoid this scenario, staff requested they consider eliminating the tank, provide a new community well system within Chappell Creek that could interconnect with Beechwood Manor and make a cash contribution towards the construction of a future water tank located in accordance with the master plan.

Therefore, the County and Chappell Creek, LLC desired to enter into a pro rata share agreement that would allow them to pay a cash contribution towards a future tank.

Furthermore, the County plans to extend the Central Water System to the Route 10 corridor and abandon the existing wells used to serve customers of the Beechwood Manor Community.

Improvements to the existing waterlines within Beechwood Manor are required prior to the connection of the Route 10 water line. Therefore, in lieu of the cash contribution for the future tank, Boyd Homes agrees to complete these improvements within one year of the executed agreement.

The County's approval of the subdivision in 2019 allowed for the first 20 lots to connect to the existing Beechwood Manor well system. Permits cannot be issued for additional lots until the Board authorizes the agreement for Boyd Homes' pro rata share contribution. Upon execution of the agreement, permits for 29 additional lots can be issued and temporarily connected to the Beechwood Manor well system.

The remaining 49 lots cannot be constructed until the extension of the Central Water System to Beechwood Manor is completed; or until such time that Boyd Homes constructs their own community well system within Chappell Creek.

Staff recommends the Board authorize the execution of the pro rata share agreement between the County and Boyd Homes to allow the improvements to the Beechwood Manor well system in lieu of a cash contribution for a future water storage tank.

Sample Motion: I move the Board approve the resolution to accept the pro rata share agreement between the County and Boyd Homes.

Government Path

- | | | |
|--|---|--|
| Does this require IDA action? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does this require BZA action? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does This require Planning Commission Action? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does this require Board of Supervisors action? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Does this require a public hearing? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If so, before what date?

Fiscal Impact Statement

Boyd Homes agrees to pay the total costs of the improvements, regardless if the cost is more than their pro rata share contribution for the future water tank. If the cost is less than the pro rata share contribution, Boyd Homes agrees to pay the difference to the County.

County Impact

Execution of the agreement will allow Boyd Homes to complete community improvements to the existing Beechwood Manor water system in lieu of a pro rata share cash contribution for a future water storage tank.

Notes

None.

Board of Supervisors
County of Prince George, Virginia

Resolution

At a regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia, this 14th day of June, 2022:

Present:

Marlene J. Waymack, Chair
Donald Hunter, Vice Chair
Floyd M. Brown, Jr.
Alan R. Carmichael
T. J. Webb

Vote:

On motion of _____, seconded by _____, which carried by a vote of _____ in favor and _____ opposed, the following Resolution was adopted:

RESOLUTION: ACCEPTANCE OF A PRO RATA SHARE AGREEMENT BETWEEN
COUNTY AND CHAPPELL CREEK, LLC FOR PUBLIC WATER
INFRASTRUCTURE IMPROVEMENTS FOR THE CHAPPELL CREEK
SUBDIVISION

WHEREAS Chappell Creek, LLC desires to construct a 98-lot subdivision requiring public water infrastructure improvements to include an elevated water storage tank; and

WHEREAS the County desires to locate the future water storage tank in accordance with the 2016 Water and Sewer Master Plan and to accept water infrastructure improvements within the Beechwood Manor well system in lieu of a cash contribution towards a future water storage tank.

NOW, THEREFORE, BE IT RESOLVED that the Prince George County Board of Supervisors this 14th day of June, 2022, does hereby authorize the County Administrator to execute a pro rata share agreement for public water infrastructure improvements for the Chappell Creek subdivision.

A Copy Teste:

Jeffrey D. Stoke
County Administrator

PRO-RATA SHARE AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2022 by and between PRINCE GEORGE COUNTY, a political subdivision of the Commonwealth of Virginia, hereinafter called the "County", party of the first part; and CHAPPELL CREEK, LLC, a Virginia limited liability company, hereinafter called "Developer", party of the second part.

WITNESSETH:

WHEREAS, Developer recognizes that it is essential to have adequate public County water service to their development (Tax Map & Parcel No. 050(0A)00-13-D and 050(0A)00-13-E) located at Chappell Creek on the James Section 1 and Section 2 in Prince George County, Virginia to meet their proposed development's potable water and/or sanitary sewer demands; and

WHEREAS, the County projects growth in the Route 10 Corridor of the County, as shown on the attached Exhibit A, which will increase the water demand from the County's water system, and the County may construct a water storage facility to meet the increased demand and water pressure requirements; and

WHEREAS, if the County constructs the water storage facility, the County will be reimbursed by the owners of property developed within the Route 10 Corridor on a pro rata basis, based upon the percentage of increased water demand which is projected to be generated by each parcel, taking into account developable area, density classifications and permissible units; and

WHEREAS, the County and Developer agree that if the County constructs a new 12" water line beginning at the current end of service on Sandy Ridge Road (approximately 120 feet southeast of Meadow View Boulevard), then running east along Sandy Ridge Road, then north on Ruffin Road until crossing Route 10 and linking up with the existing piping networks in the Jordan on the James and Beachwood Manor subdivisions-a total of approximately 4.5 miles of 12" waterline, shown on the attached Exhibit B (the "County Waterline"), then prior to the development of the 49 lots in Chappell Creek on the James Section 2 and connection of those lots to the County public water distribution system, Developer will, in lieu of reimbursement to the County for its share of the estimated cost of construction of the water storage facility, replace and enlarge a waterline on Beaver Castle Road in the County in the location more specifically described herein (the "Project"), and the parties agree that the Project will satisfy all reimbursement obligations of the Developer with regard to the cost of the new water storage

facility; and

WHEREAS, the County agrees that upon execution of this Agreement, the 49 homes in Chappell Creek on the James Section 1 will be connected to the County public water distribution system, and that upon completion of the County Waterline and the Project, all 98 homes in Chappell Creek on the James Section 1 and Section 2 will be connected to the County public water distribution system; and

WHEREAS, the parties agree that certain provisions in the Agreement between Developer and the County dated December 11, 2007 regarding a water extension project proposed by the County (the "Water Agreement") are no longer in effect; and

WHEREAS, the Developer is willing to construct the Project, as approved by the County Engineering and Utilities Department, and the County is willing to accept the Project into the public water system, upon the conditions set forth herein.

NOW THEREFORE, this AGREEMENT, by the parties here to-wit:

1. Developer covenants and agrees that the Project will be designed by a registered professional engineer licensed by the Commonwealth of Virginia, and constructed by a contractor licensed by the Commonwealth of Virginia. The Project will be designed and constructed as approved by the County's Engineering and Utilities Department (the "Department"), and shall meet the County's current design and construction standards. In addition, the Developer, or their engineer, shall obtain approvals from the Virginia Department of Health, and Department of Environmental Quality for the construction of the Project, if applicable. The Developer will also obtain all other necessary permits and approvals for construction.
2. The Developer agrees to promptly initiate the design of the plans for the Project, to diligently pursue completion of the Project, and to finish the construction of the Project within 1 year of the execution of this agreement to accommodate the County Waterline.
3. The Project is defined as:

(i)The replacement by Developer of the 6” public waterline on Beaver Castle Road from ST. 17+35 to 27+30 and the 4” public waterline on Beaver Castle Road from ST. 27+30 to 36+10 with a new 8” waterline, as identified on the approved site plan prepared by Timmons Group, Inc. entitled “Chappell Creek on the James Section 1 and Section 2” , dated December 12, 2005 and last revised August 18, 2021; and (ii) the preparation of a Master Utility Plan to identify the parcels that will be served by the planned water improvements, to include the above-mentioned improvements together with the County Waterline and future water storage tank.

The Project’s facilities shall be designed and constructed to provide adequate water pressure and supply throughout the entire Chappell Creek on the James subdivision while not negatively impacting the water pressure in the adjacent subdivision of Beachwood Manor.

4. The Property is identified as:
Chappell Creek on the James Section 1 and Section 2 located on Beaver Castle Road parcels 050(0A)00-013-D & 050(0A)00-013-E. Chappell Creek on the James is a single-family residential subdivision consisting of 98 lots, with 49 lots in Section 1 and 49 lots in Section 2. The site plans for the subdivision dated December 12, 2005, last revised August 18, 2021, were last approved by Prince George County on November 4, 2021.
5. The County will grant to Developer all necessary permits or easements, if any, on County property, in order to construct the Project. In addition, Developer will make commercially reasonable efforts to obtain offsite easements from third parties which are necessary in order to complete the Project. In the event that Developer is unable to obtain such offsite easements, the County will make reasonable efforts to obtain such offsite easements for the benefit of Developer, including eminent domain, if necessary, and, if such easements are not obtained within ten (10) years from the date of the Agreement, Developer shall be released from its obligations set forth in this Agreement. At such time as Developer may begin construction of the Project, Developer will provide a cash bond to the County in an amount of ten (10) percent of the cost of installation of all improvements for the Project. The warranty and cash bond shall be maintained for a period of one (1) year after acceptance of the Project by the County.
6. Pro-Rata Share Reimbursement:

In the event that the County Waterline is constructed, and the Developer develops the 49 lots in Chappell Creek on the James Section 2 and desires to connect those lots to the County public water distribution system, the Developer's reimbursement to the County for its impact on the water storage facility is calculated as follows: This increased demand may result in the County needing to construct a 500,000-gallon water storage facility at an estimated cost of \$2,000,000.00. It has been estimated that the future projected growth in the Rt. 10 Corridor in which Chappell Creek is located will generate an increased demand of 500,000 gallons of water per day from the County's water system by 2045 with Developer contributing approximately 31,200 gallons per day to this increased demand in the event that Developer develops 98 lots in Chappell Creek on the James Section 1 and Section 2 and connects those lots to the County public water distribution system (See Exhibit A). The determined prorated share per unit (based on 312 GPD per unit) for future projects within the Rt. 10 corridor to fund this improvement to the County's water system is \$1,215.39, and with 98 units associated with Developer's proposed development, Developer's prorated contribution will be \$119,108.22 (the "Prorated Contribution") if the above conditions are met. Developer's cost associated with constructing the Project, should Developer opt to develop the 98 lots in Chappell Creek on the James Section 1 and Section 2 and to connect those lots to the County public water distribution system, shall serve as the primary source of its Prorated Contribution to the water storage facility if constructed. Developer shall submit invoices to the County for the cost of constructing the Project upon completion of the Project. If the construction cost of the Project exceeds Developer's prorated contribution, the County will not be liable for reimbursing Developer for the excess of the Project construction cost over the Prorated Contribution. If the construction cost of the Project is less than Developer's Prorated Contribution, Developer will pay such shortfall to the County in immediately available funds upon demand. Developer will complete construction of the Project, and County will complete construction of the County Waterline prior to the connection of the lots in Chappell Creek on the James Section 2 to the County public water distribution system.

Commented [FH1]: Spreadsheet?

7. The County hereby agrees that (i) if this Agreement is finalized and signed by authorized representatives of the County and the Developer, then the County shall permit connection of the 49 homes in Chappell Creek on the James Section 1 to the County public water distribution system, and that (ii) upon completion of the County Waterline and the Project, then the County shall permit the connection of all 98 of the homes in Chappell Creek on the James Section 1 and Section 2 to the County public water distribution system. Developer agrees to pay all standard water connection fees associated with connection of the Developer's property to the

County's systems as and when such connections are requested by Developer.

8. Term:

The term of this Agreement shall be a period of ten (10) years from the date of this Agreement (the "Term"). The parties acknowledge that it may be the case that the County Waterline may not be constructed, and this Agreement will nevertheless terminate at the end of the Term.

9. Status of the Water Agreement:

Since certain timelines have not been met in the Water Agreement, the parties agree that the Developer is no longer responsible for the following requirements contained within the Water Agreement: (i) payment of the Capital Contribution (as defined in the Water Agreement) and (ii) advance payment of Water Connection Fees (as defined in the Water Agreement) for payment of costs of the Water Extension Project (as defined in the Water Agreement).

10. Default:

In the event that the Developer shall for any reason or through any cause be in default of the terms of this Agreement, the County may give the Developer written notice of such default.

Unless otherwise provided, Developer shall then have thirty (30) days from the date such notice is received to cure the default, provided, however, such period may be extended for up to an additional sixty (60) days if Developer, in the discretion of the County, is diligently pursuing a cure. Upon failure of the Developer to cure the default, the County may immediately cancel and terminate this Agreement as of the date of the default notice and shall be entitled to pursue all other remedies available by law.

In the event of violations of material applicable law, safety or health standards and regulations by Developer, this Agreement may be immediately canceled and terminated by the County with written notice to Developer, and provisions herein and the foregoing opportunity to cure default shall not be applicable.

In the event the County does not begin the construction of the County Waterline as described herein, due to not allocating sufficient funds, before the second anniversary of the date of this Agreement, the Developer will construct the necessary water infrastructure improvements in accordance with the approved site plans prepared by Timmons Group, Inc. entitled "Chappell Creek on the James Section 1 and Section 2", as same may be amended from time to time, prior to, and in the event of, the connection of the lots in Chappell Creek on the James Section 2 to the County public water distribution system.

In the event the County Waterline is completed prior to the completion of the Project, the Developer will construct the necessary water infrastructure improvements in accordance with the approved site plans prepared by Timmons Group, Inc. entitled "Chappell Creek on the James Section 1 and Section 2", as same may be amended from time to time, prior to, and in the event of, the connection of the lots in Chappell Creek on the James Section 2 to the County public water distribution system; or will reimburse the County for the Prorated Contribution as calculated with current costs for construction of the 500,000-gallon water storage facility, less the amount of contribution previously provided.

11. Virginia Contract:

This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

The Developer shall comply with all applicable federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of its obligations set forth herein. The Developer represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Agreement prior to the initiation of work. Developer further represents that it is a company in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of this Agreement. The Developer shall at all times observe all health and safety measures and precautions necessary for the sanitary and safe performance of its obligations set forth herein.

12. Venue:

Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in Prince George County, Virginia.

13. Notice:

If to County: County of Prince George, Virginia
P.O. Box 68
Prince George, VA 23875
Attn: County Attorney

If to Developer: Chappell Creek, LLC
544 Newtown Road, Suite 128
Virginia Beach, VA 23462
Attention: General Counsel
LegalNotice@boydhomes.com

All notices under this Agreement, including change of address, shall be in writing and shall be deemed given (i) when hand delivered, (ii) one business day after being delivered to a nationally recognized overnight delivery service for next business day delivery, (iii) three business days after being deposited in the United States Mail, postage prepaid via first class mail, or (iv) one business day after being sent by email (unless sender receives a notice of non-delivery during that time period) or upon confirmed receipt, whichever is earlier, and in all events addressed to the addresses shown above. The parties may, at any time, change their notice address by giving notice to all other parties. In addition to the above, any written notice given in any manner shall be effective, if not already deemed effective, when actually received.

14. Non-assignment:

The Developer shall not assign its respective rights and duties under this Agreement without the prior written consent of the County, which consent shall not be unreasonably withheld.

15. Compliance with Federal Immigration Law:

The Developer, including its contractors, subcontractors, and authorized agents do not, and shall not during the performance of this Agreement, knowingly employ an

unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

16. Modification:

There may be no modification of this Agreement, except in writing, executed by the authorized representatives of the parties.

17. Successors and Assigns:

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

18. Severability:

If any part, term, or provision of this Agreement, shall be found by a court of competent jurisdiction to be legally invalid or unenforceable, then such provision or portion thereof, shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of the Agreement shall not affect the validity of any other provision or portion of the Agreement.

19. Waivers:

The failure of any party to insist upon strict performance of any obligation in this Agreement shall not constitute a waiver of said party's right to demand strict compliance therewith in the future.

20. Authority to Sign:

The undersigned representative of the Developer represents and warrants that he/she is authorized to execute this Agreement on behalf of the Developer and that the execution and delivery of this Agreement has been duly authorized by all appropriate and necessary action.

21. Counterparts:

This Agreement may be executed in counterparts, and any number of counterparts signed in the aggregate by the parties will constitute a single, original instrument.

22. Non-Appropriation:

It is understood and agreed between the parties hereto that the County shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Agreement.

23. No Delay for Litigation:

The Developer shall not cause a delay in services because of the pending or during litigation proceedings, except with the express, written consent of the County or written instruction/order from the Court.

24. Indemnification/Hold Harmless:

The Developer shall, during the term of the contract, indemnify, defend and hold harmless the County from and against any and all losses, damages, claims, fines, penalties, suits and costs, including bodily injury or death of any person(s), or loss or damage to property, as well as fines, assessments and penalties imposed by any authority which may arise out of any violations of law by, and all acts and omissions of the Developer, the Developer's agents, employees occurring in connection with the products, completed operations, and other services covered herein, to be provided or completed by Developer pursuant to the Agreement, and involving no negligent act of omission on the part of the County.

25. Insurance:

Developer shall purchase and maintain the following insurance coverage:

A. Workers Compensation

As statutorily required by the Commonwealth of Virginia.
Employers Liability: \$1,000,000.

B. Commercial General Liability Minimum Limits

General Liability:
\$1,000,000 General Aggregate Limit
\$1,000,000 Products & Completed Operations
\$1,000,000 Personal and Advertising Injury

\$1,000,000 Each Occurrence Limit
\$ 50,000 Fire Damage Limit
\$ 5,000 Medical Expense Limit

C. Auto Liability Insurance

Coverage sufficient to cover all vehicles owned, used, or hired by the Developer, his agents, representatives, employees or subcontractors.

Minimum Limits

Automobile Liability:
\$1,000,000 Combined Single Limit

- D. Should the Developer lease his equipment, it shall be the Developer's responsibility to obtain any necessary additional insurance, at Developer's expense.
- E. A certificate evidencing the above insurance coverage shall be provided by the Developer to the County prior to the commencing work. The County shall be named as an additional insured; endorsements of same shall be submitted with certificate. It shall be the Developer's responsibility to keep the required insurance coverages in full force, and without lapse, during the entire term of this agreement. Notices of cancellation or any changes to insurance shall be provided to the County thirty (30) days prior to the effective date of such change or cancellation.
- F. All insurance shall be placed with insurers maintaining an A.M. best rating of no less than A:VII.
26. Non-discrimination:
- A. During the performance of this contract, the Developer agrees as follows:
- 1.) The Developer will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, service disabled veterans or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal

operation of the Developer. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- 2.) The Developer, in all solicitations or advertisements for employees placed by or on behalf of the Developer, will state that such Developer is an equal opportunity employer.
- 3.) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

27. Drug-Free Workplace:

During the performance of this contract, the Developer agrees to (1) provide a drug-free workplace for the Developer's employees; (2) post in conspicuous place, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Developer, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

28. Responsibility of Developer

The Developer shall, without additional costs or fee to the County, correct or revise any errors or deficiencies in his performance. Neither the County's review, approval or acceptance of, nor payment for any of the services required under this Agreement shall be deemed a waiver of rights by the County, and the Developer shall remain liable to the County for all costs which are incurred by the County as a result of the Developer's negligent performance of any of the services furnished by Developer under this Agreement.

In witness whereof, the parties hereafter have caused the same to be signed as of the date

above and by their duly authorized officers.

PRINCE GEORGE COUNTY, VIRGINIA

By _____

ATTEST:

Approved As To Form:

County Attorney

DEVELOPER:
CHAPPELL CREEK, LLC

By Boyd Corporation, manager

By: _____
Its: _____

Route 10 Development - Pro Rata Share Contributions

Chappell Creek	
Est. Cost of 0.5M Gallon Tank	\$2,000,000.00
Project Demand Increase (GPD)	514,248
Number of Units	1,646
Prorated Share Per Unit	\$1,215.39
Chappell Creek's Prorated Share	\$119,107.86
Beaver Castle Rd. W/L Replacement	\$127,025.21
Timmons- Updated Master Plan Fee	\$20,000.00
Chappell Creek's Contribution in Work Performed	\$147,025.21
Chappell Creek's Prorated Share Minus Costs	-\$27,917.35

GPD per Unit 312
 Share of Cost/Unit \$1,215.39

Developable Parcels within Service Area of New Water Storage Tank

Master Plan Map ID	Classification	Developable Area (AC)	Density Classification	Units	Demand (GPD)	% of Demand	Contribution
2	Residential	116	R-1	290	90,615	17.62%	\$ 352,462.03
4	Commercial	61	Retail	392	122,400	23.80%	\$ 476,805.40
5 - Chappell Creek	Residential	68	Lot Count	98	31,200	6.07%	\$ 119,107.86
7	Commercial	55	Retail	352	109,782	21.35%	\$ 427,652.38
8	Commercial	8	Retail	51	15,962	3.10%	\$ 62,179.48
9	Residential	107	R-1	268	83,688	16.27%	\$ 325,723.53
12	Commercial	18	Retail	114	35,601	6.92%	\$ 138,682.59
100	Commercial	52	Golf Course	80	25,000	4.86%	\$ 97,386.72
TOTAL				1,646	514,248	100%	\$ 2,000,000.00