

COUNTY OF YORK

MEMORANDUM

DATE: September 15, 2023

TO: York County Board of Supervisors

FROM: Neil A. Morgan, County Administrator



SUBJECT: Revised Memorandum of Agreement with Queens Lake Community Association

The Board is aware that we entered into an understanding with the Queens Lake Community Association (QLCA) last year as part of a cooperative effort to jointly invest in needed lake-related improvements. The initial focus was on state-required dam improvements, but the intention was to comprehensively approach the long-term health of Queens Lake from a water quality and quantity perspective in a manner that reflected both the County's interests and those of the residents. Based on what we have learned working together over the past year, I am recommending a revised approach.

Collaborative Efforts to Date

The County is working with the QLCA's designated Stormwater Committee. Engineering design work is ongoing, which envisions phased renovations to the dam, spillway, and various Queens Lake tributaries that are experiencing erosion. Originally, the QLCA was going to take the lead in the dam repair work while the County took the lead in the other components. We have now concluded that is not a smart way to coordinate this multi-year, phased program of work. All of those working on this topic believe that it is much more logical to have the County Public Works staff and its consultants take the lead in managing all aspects of design and construction while still working closely with the neighborhood.

Current Situation

Based on our work thus far, here is a draft version of the document we will ultimately be recommending. The revised strategy would maintain the principle that the QLCA would contribute financially to the work and continue to have a voice in priorities and timing through its committee. However, it recognizes that a single entity (the County) needs to be in charge of coordinating all aspects of this undertaking. In exchange for the County taking on a larger financial responsibility to include ongoing maintenance, the revised agreement requires the QLCA to make both a capital contribution and an ongoing stormwater maintenance contribution. Additionally, the QLCA would provide all construction and maintenance easements within its power to provide the County.

I have met with representatives of the Queens Lake community, and I believe there is strong support for our new approach. The County staff team believes the new agreement represents a more rational way to proceed. I wanted to give the Board of Supervisors time to consider and review the new document before bringing it forward for your

consideration. With the Chairman's support, my intention is to schedule this matter for Board action sometime this fall.

Attachment:

- Second Agreement between the County of York and Queens Lake Community Association (QLCA)

**SECOND AGREEMENT BETWEEN THE COUNTY OF YORK, VIRGINIA AND
QUEENS LAKE COMMUNITY ASSOCIATION, INC. REGARDING STORMWATER
MANAGEMENT OF THE QUEENS LAKE DRAINAGE BASIN**

1. **PARTIES.** The Parties to this agreement are the County of York, Virginia and the Queens Lake Community Association.
 - a. **York County (the County)** is a political subdivision of the Commonwealth of Virginia.
 - b. **Queens Lake Community Association, Inc. (QLCA)** is a nonprofit Virginia corporation that serves as an association of homeowners in the community of Queens Lake, located in York County, Virginia. Membership is not compulsory. Approximately 70% of Queens Lake residents, including both “deeded” and “traditional” (non-deeded) members provide dues income for QLCA maintenance and operations.
2. **AGREEMENT REPLACES PRIOR MOU.** This agreement supersedes and replaces any previous agreement; in particular the previous MOU finalized on October 2, 2022 between the Parties.
3. **AUTHORITIES.** This agreement was authorized by QLCA at a special meeting held on _____. This agreement was approved by the York County Board of Supervisors on _____.
4. **PURPOSE.** Located within the Queens Lake neighborhood are two lakes, one known as “Queens Lake,” with a dam and spillway on the lake, plus a smaller lake known as “Princess Pond”, all of which are owned by the QLCA. The lakes, the dam, and much of the residential community, were constructed beginning in the 1950s, long before contemporary site and subdivision rules were established to govern stormwater, utilities, and state recognized homeowners associations. The lake and its tributaries, including Princess Pond, serve as a drainage basin for most of the Queens Lake neighborhood, but also convey stormwater from other developed neighborhoods in the upper portion of the County, collectively known as the “Queens Lake Drainage Basin”. The County recognizes that while the lake is an amenity, most specifically for the immediate residential neighborhood, it is also a benefit to the County more generally. An overview of the area is attached as Exhibit 1.

The Virginia Department of Conservation and Recreation (DCR) inspects and regulates dams within the Commonwealth of Virginia pursuant to, among other authorities, the Dam Safety Act, Virginia Code § 10.1-604 *et seq.*, and Virginia Administrative Code 4-50-20 *et seq.* DCR’s Dam Safety Division originally classified the QLCA dam as special low hazard, with virtually no maintenance requirements, but reclassified it in mid-2020 as a low hazard dam. As such DCR

asserts that it may require QLCA to upgrade the dam and its spillway per the reclassification. The parties agree that to the extent there exist DCR requirements for any upgrades to the dam and associated improvements, such upgrades and improvements are the responsibility of the QLCA. The QLCA has approached York County government seeking advice and assistance in responding to DCR's asserted regulatory requirements. The County recognizes the County's interest in protecting the lake and the dam and that the Queens Lake neighborhood has responsibilities related thereto. The Parties also recognize that the lake basin conveys public stormwater and, therefore, that the larger community as shown on Exhibit 1 derives benefit from the existence of a healthy Queens Lake.

The County recognizes its broader interest in protecting the lake and the dam and wishes to be a collaborative participant in ensuring that the dam, spillway, and the lake are properly maintained while also recognizing that the immediate Queens Lake neighborhood has responsibilities related to the lake and the dam. QLCA acknowledges it has responsibilities in this regard but also requests the County's participation in protecting the lake and the dam, recognizing that the lake basin does convey public stormwater and that the larger community (Exhibit 1) derives benefit from the existence of a healthy Queens Lake. The mutual long-term goal of this agreement is the preservation of a healthy, attractive and functional lake and drainage system.

To that end, the Parties have concluded that all future storm water, lake health, and dam protection initiatives are more efficiently managed as integrated phased projects. The County is prepared to take the lead in managing all design and construction work related to this agreement, and to commit to pay for ongoing lake and dam maintenance. QLCA has invested a considerable portion of its capital resources already to design an appropriate dam repair project and has purchased wetlands credits, and will make one-time and future payments to defray the County's costs as provided herein.

5. MUTUAL COMMITMENTS

- a. The QLCA and the County will coordinate and collaborate regarding the remediation and maintenance of the QLCA facilities serving the Queens Lake Drainage Basin.
- b. One project management point of contact will be appointed by the County Administrator and by QLCA with the responsibility of sharing information and maximizing coordination. A larger project management team will be designated by the County Administrator and QLCA to advise and assist the project point persons throughout project implementation. The project management team may be expanded to include consultants, VDOT, DCR and others as needed. Each party shall notify the other in writing of any change to the project management point person.

- i. The County's project management point of contact is:

Joseph Brogan, Chief Stormwater Engineer
Travis Rhodes (Alternate)
Robert Krieger (Alternate)

- ii. QLCA's project management point of contact is:

Jack Dooley, Special Committee Chairperson
Doug Ellis (Alternate) or the current QLCA President
Bruce Keener (Alternate) or the current QLCA Lake Committee
Director

- c. The County and the QLCA pledge to work cooperatively to complete the work that DCR asserts is required, based on the regulations.
- d. The parties recognize that optimal performance of the mutual obligations requires performance by the other party of their obligations under this agreement.

6. OBLIGATIONS OF THE PARTIES.

a. The County

- i. The County will and hereby does assume responsibility for project management and financial responsibility for upgrading and maintaining the stormwater management flow of the Queens Lake Drainage Basin, the health and ongoing maintenance of the lake, the upgrade and ongoing maintenance of the spillway; and for the upgrade and ongoing maintenance of the dam as required by the Commonwealth's and DCR's regulations. The location of the stormwater management flow, spillway, lake and dam are depicted in the attached Exhibit 2.
- ii. Any financial requirements are subject to appropriation by the County Board of Supervisors.

b. The QLCA

- i. The QLCA will convey, at no cost to the County, all easements upon property owned or controlled by QLCA that are necessary for the County's obligations under this agreement, including, but not limited to,

for construction and maintenance of the lake, spillway and dam system, subject to QLCA membership approval. The required easements are set forth and described generally in the attached Exhibit 2, and the parties acknowledge that additional maps or surveys may be required.

- ii. The QLCA pledges its best efforts to assist the County in obtaining easements upon property that is not controlled or owned by QLCA. The required easements are described in Exhibit 2.
- iii. The QLCA will provide the County a one-time initial capital contribution to the project of \$110,000. This amount is due at the time that the first contract is awarded for dam and spillway construction.
- iv. The QLCA will also make an "Annual Facilities Maintenance Contribution" of \$20,000 commencing in the calendar year that the QLCA makes the initial capital contribution, as set forth in the preceding paragraph. The Annual Facilities Maintenance Contribution will adjust annually for inflation, but shall in no case be increased by more than 3%.
- v. The annual obligation of the QLCA to pay the Annual Facilities Maintenance Contribution shall cease if the County implements a storm water management fee program throughout the County.

7. OTHER PROVISIONS

- a. Nothing in this agreement is intended to conflict with current law or regulation or the directives of the United States Government, the Commonwealth of Virginia, or York County. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.
- b. Nothing in this agreement is intended to modify the sovereign or other legal immunities of the County of York, or its officers, agents and employees.
- c. This agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and the Code of the County of York, Virginia. Venue for any dispute arising out of this agreement shall be exclusively in the Circuit Court for the County of York and City of Poquoson.
- d. This agreement may be executed in one or more counterparts, and each such counterpart shall be deemed an original, and the parties may become a party hereto by executing any such counterpart, so long as the counterpart contains an original signature of both parties.

e. All notices pursuant to this agreement shall be sent to the contact listed as a point of contact, above. The parties may change the point of contact by providing written notice to the other party.

8. **ENTIRE AGREEMENT.** This agreement and the exhibits hereto constitute the entire understanding between the parties, and it supersedes all prior or contemporaneous understandings or representations (whether written or oral) of the parties regarding the subject matter hereof.

9. **EFFECTIVE DATE.** The terms of this agreement will become effective upon signature of both parties.

10. **MODIFICATION.** This agreement may be modified only upon the mutual written consent of both parties.

11. **TERMINATION.** The terms of this agreement, as modified with the consent of both parties, will remain in effect for twenty years from the date of signature (effective date). The understanding may be extended by mutual written agreement of the parties.

APPROVED BY:

QUEENS LAKE COMMUNITY ASSOCIATION, INC.

Doug Ellis, President

Date: _____

COUNTY OF YORK, VIRGINIA

Neil A. Morgan, County Administrator

Date _____

Approved as to form:

County Attorney