

**SECOND AMENDMENT TO THE
CHESAPEAKE BAY NUTRIENT OFFSET AGREEMENT**

THIS SECOND AMENDMENT to the Chesapeake Bay Nutrient Offset Agreement (the “Second Amendment”) is made this ____ day of _____, by and between the Town of Washington, Virginia (“Washington”) and the County of Spotsylvania, Virginia (“Spotsylvania”) and amends the original Chesapeake Bay Nutrient Offset Agreement dated September 10, 2008 (the “Offset Agreement”).

BACKGROUND

WHEREAS, by letter dated June 20, 2008, the Virginia Department of Environmental Quality (“DEQ”) encouraged Spotsylvania to assist Washington by providing an allocation of 183 pounds per year of Phosphorous on a temporary basis (the “Offset Allocation”), confirmed that Spotsylvania would retain its full Phosphorus allocation following the term of an offset agreement, and expressed its appreciation for Spotsylvania’s leadership and partnership in the Chesapeake Bay cleanup program.

WHEREAS, pursuant to the Offset Agreement, Spotsylvania transferred the temporary Offset Allocation to Washington for purposes of water quality protection in accordance with DEQ’s General Virginia Pollutant Discharge Elimination System Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia, 9 VAC 25-820 (the “Watershed General Permit”) issued effective January 1, 2007.

WHEREAS, DEQ reissued the five-year Watershed General Permit effective January 1, 2012, which pursuant to Part I H 1 e thereof, required Washington to secure an Offset Allocation through compliance year 2016 (ending December 31, 2016); however, the Offset Agreement provides the Offset Allocation through compliance year 2013 (ending December 31, 2013) and term of such agreement expires June 30, 2014.

WHEREAS, the parties desire to extend the Offset Agreement to include compliance year 2021 and expire on June 30, 2022.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein, and as contained in the above-referenced Offset Agreement, the parties hereto agree to the Second Amendment, as follows:

A. Paragraph 1 of the Offset Agreement is amended and restated in its entirety as follows:

1. Temporary Offset Allocation. Beginning for the compliance year which starts January 1, 2017 and for each compliance year thereafter through and including compliance year 2021 (ending December 31, 2021), Spotsylvania hereby transfers from the Spotsylvania Phosphorus Allocation to Washington, and Washington hereby accepts, a temporary allocation of 183 pounds per year of Phosphorus (the “Offset Allocation”). Spotsylvania

shall have no obligation to extend the availability of the Offset Allocation beyond compliance year 2021, but may elect to do so in its discretion following a request for such an extension from Washington. Any such extension shall be in writing as an amendment to this Agreement pursuant to Paragraph 18 below. Notwithstanding the other provisions of this Paragraph 1, this Agreement and the Offset Allocation transfer are expressly contingent upon the continued ability of Spotsylvania to provide the Offset Allocation under actual operating conditions and current laws and regulations including without limitation the Spotsylvania Phosphorus Allocation. If, by any order, law, regulation, local legal obligations or requirements, facility operating conditions, or any changes thereto such ability were to cease, Spotsylvania's obligation to provide the Offset Allocation shall cease and this Agreement shall be renegotiated as provided in Paragraph 17.

B. Paragraph 8 of the Offset Agreement is amended and restated in its entirety as follows:

8. Term. This Agreement shall be in effect once executed by both parties and shall expire on June 30, 2022. Notwithstanding the preceding sentence, if either Party fails to perform a material obligation hereunder, and fails to cure such failure to perform within sixty (60) days of written notice from the non-defaulting Party, the non-defaulting Party may terminate this Agreement upon written notice to the other Party.

C. All other provisions of the Offset Agreement shall continue in full force and effect for the term stated under Paragraph B of this Second Amendment.

D. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused the execution of this Second Amendment.

TOWN OF WASHINGTON

By: _____
Name: _____
Title: _____


Attest:
By: _____
Name: _____
Title: _____

Approved as to form:
By: _____
Name: _____
Title: _____

COUNTY OF SPOTSYLVANIA

By: _____
Name: _____
Title: _____

Attest:
By: _____
Name: _____
Title: _____

Approved as to form: 
By: A. Spaulding
Name: Alexander Spaulding
Title: Sr. Asst. County Attorney