



**Town of Gordonsville, Virginia  
Agenda Item Summary  
October 19, 2020**

**AGENDA ITEM 11c**

Unfinished Business

**AGENDA TITLE:**

Discussion of Quarry Water Access Agreement Extension.

**PRESENTER:**

Mayor Robert Coiner

**DISPOSITION:**

☐ Action Required ☒ For Discussion  
☐ Consent Agenda ☐ Closed Session  
☐ Informational

**ATTACHMENTS:**

☐ yes ☒ no

**BACKGROUND:**

On April 18, 2016, the Town entered into a Quarry Water Access Agreement with Klöckner (see attached). The Agreement is for a term of five years and provides that the parties will enter into negotiations to extend the term at least 6 months prior to the end of the initial term, which ends on April 18, 2021.

Staff has been made aware that Klöckner desires to enter into negotiations to extend the term, and has confirmed with Klöckner that renewal of the agreement as written for another five-year term is acceptable.

How does Council wish to proceed?

TAX MAP NUMBERS: 9-16-1 and 9-2

Prepared by and Return to:

Angela Scolforo, Town Attorney

P.O. Box 276, Gordonsville, VA 22942

**QUARRY WATER ACCESS AGREEMENT**  
**AND DEED OF EASEMENT**

This Quarry Water Access Agreement and Deed of Easement ("Agreement") is made and entered into this 18<sup>th</sup> day of April, 2016, ("Effective Date") by and between the TOWN OF GORDONSVILLE, VIRGINIA ("Town" and GRANTOR for recording purposes) with an address of 112 South Main Street, P.O. Box 276, Gordonsville, VA 22942-0276, and KLÖCKNER PENTAPLAST OF AMERICA, INC. ("Klöckner" and GRANTEE for recording purposes) with an address of 3585 Klöckner Road, Gordonsville, VA 22942.

**W I T N E S S E T H:**

WHEREAS, Klöckner purchased a parcel of real estate from the Town in the Green Springs District of Louisa County by deed dated December 13, 1977 and recorded in the Clerk's Office of the Circuit Court of Louisa County in Deed Book 210, Page 557 on which it constructed and operates a manufacturing facility;

WHEREAS, the Town owns a parcel of real estate adjacent to Klöckner's property on which is located a quarry which contains a relatively constant supply of water ("Quarry") which the Town acquired by deed dated September 17, 1975, recorded in the Clerk's Office of the Circuit Court of Louisa County in Deed Book 191, Page 25;

WHEREAS, Klöckner requires access to water from the Quarry for its fire protection system to provide for the safety of its employees and property and for an emergency backup source for process cooling water and to periodically test its systems;

WHEREAS, as a condition of Klöckner's agreement to purchase the property from the Town, the Town agreed to enter into an agreement to allow Klöckner to access and use water from the Quarry in an unrecorded Addendum to Option Agreement, dated September 26, 1977, which access and use were most recently granted in the Agreement dated July 20, 1981, recorded in the Clerk's office of the Circuit Court of Louisa County, VA in Deed Book 484, Page 101, as amended by the Extension Agreement, dated July 20, 1981, which extended the term for a final five (5) years, (hereafter collectively the "Lease"), during which Klöckner was required to pay the Town the sum of Three Thousand Dollars (\$3,000) per year, and said Lease expired on July 20, 1996, without renewal;

WHEREAS, the Town received no payments from Klöckner from July 20, 1996, to the present;

WHEREAS, Klöckner constructed and maintains a system of pumps, pipes and equipment which provides Klöckner with access to water from the Quarry from the time Klöckner constructed its manufacturing facility to the present;

WHEREAS, Klöckner, by a Subordination Agreement dated May 4, 1994, recorded in the Clerk's Office of the Circuit Court of Louisa County, Virginia, in Deed Book 484, Page 094, and signed by the Town, subordinated its rights to access and use water from the Quarry, other than those rights to use water from the Quarry for fire protection purposes, for an emergency backup source for process cooling water and to periodically test its systems;

WHEREAS, Klöckner, in the May 4, 1994 Subordination Agreement, reserved the right to maintain its existing water supply system, which utilizes water from the Gordonsville Quarry for fire protection purposes and as an emergency backup source of water;

WHEREAS, Klöckner requires clear rights to access and use water from the Quarry to protect its employees and property from fire and to ensure it has a sufficient temporary emergency backup source for process cooling water, and the ability to periodically test its systems;

WHEREAS, the Town wants to continue to cooperate with Klöckner to support Klöckner's ability to protect its employees and property and manufacture products; and

WHEREAS, Klöckner and the Town wish to enter into a new Lease Agreement as to Klöckner's rights to access and use water from the Quarry;

NOW THEREFORE, for and in consideration of the mutual promises and other good and valuable consideration, the receipt of which is hereby acknowledged, the Town does hereby GRANT AND CONVEY to Klöckner for the term of this Agreement:

(a) the right to access and use water from the Quarry owned by the Town adjacent to the property of Klöckner: (i) for fire protection purposes; (ii) for an emergency backup source of water upon notice to the Town and for no more than 10 days for Klöckner's process cooling water, and (iii) to periodically test Klöckner's systems, all subject to the provisions of the May 4, 1994, Subordination Agreement between Klöckner, Gordonsville Energy, L.P. and the Town of Gordonsville recorded in the Clerk's Office of the Circuit Court of Louisa County, Virginia in Deed Book 484, Page 094. Any use of water from the Quarry other than what is listed in this section shall require written consent of the Town and be charged at the then-current out-of-town rates in addition to that specified in Section 9 herein. Water used for emergency conditions more than 10 days per calendar year shall be charged at the then-current out-of-town rates in addition to that specified in Section 9 herein. All water usage of the Quarry (fire suppression, testing, emergency, other) shall be reported to the Town within 24 hours of the commencement of use.

(b) A non-exclusive easement for the purposes stated above in Paragraph (a), and the right to maintain and repair, at no expense to the Town, the existing pumping station and related facilities on the Quarry site, which pumping station and related pumps, pipes, electrical lines, and equipment shall be the property of Klöckner and shall be operated and maintained by Klöckner, and shall be removed by Klöckner at the termination of this Agreement, or any extension thereto,

(c) the right to take all actions necessary and proper for the non-exclusive enjoyment of the rights and easements granted herein including, but not limited to, the right to run the pumping station and related equipment periodically to test it and keep it in working order.

The rights granted to Klöckner herein are subject to the following terms and conditions, which the parties, by their execution hereof, agree to be bound by, accept and acknowledge:

1. The use of water by Klöckner from the Quarry is non-exclusive, and the Town specifically retains the right to use or to allow others to use water from the Quarry subject to the terms of this Agreement.
2. The Town does not guarantee water availability from the Quarry, and should water from the Quarry become unavailable by act of God or other reason, the Town has no obligation to replenish or replace the supply.
3. The Town shall have no obligation to treat water from the Quarry and does not guarantee or represent that such water is now or will in the future be potable.
4. The Town shall have no obligation to pump water from the Quarry to the property of Klöckner, but will allow Klöckner to maintain its existing pumps and other equipment within and adjacent to the Quarry for such purposes as provided above.
5. Klöckner is required by its insurance company to maintain the Quarry's surface level a sufficient distance above Klöckner's pump intakes in the Quarry in order that there will be a

sufficient volume of water available to Klöckner in the event of a fire. Klöckner represents that the Quarry surface level is approximately fourteen (14) feet above Klöckner's pump intakes at this time. Upon written notice from Klöckner to the Town that the Quarry's surface water level drops to eight (8) feet above Klöckner's pump intakes, the Town will not draw water from the Quarry, except as is absolutely necessary for the health, safety, and welfare of its citizens. In the event of future development by the Town that will place additional demands on the standing water in the Quarry, the Town reserves the right to require Klöckner increase the depth of the water intake to accommodate the standing water reserve above the intake as identified above. If the Town establishes the need for an increase in the depth of the intake, Klöckner will be notified of the Town's maximum intended draw down depth. On receipt of such a notice Klöckner may request a 2 year extension of the current provisions in order to make changes and equipment upgrades as may be necessary to support the increased intake depth. The Town has no responsibility for decreases in the Quarry's water surface level due to withdrawals by Gordonsville Energy Limited Partnership/Dominion Resources ("GELP") pursuant to the water withdrawal rights currently granted to GELP in the May 4, 1994 Subordination Agreement described above and acts of God and other matters beyond the reasonable control of the Town.

6. The Town has the right to install, maintain, and access to regularly read, at its sole cost, a meter to measure the water usage by Klöckner. If it is determined that Klöckner is using water for purposes other than fire suppression, periodic testing, and emergency backup, the Town reserves the right to limit such use and/or charge a fee for such use at its out-of-town rates.

7. Klöckner shall maintain their system of pumps, pipes and equipment in a professional and workmanlike manner and shall allow the Town to inspect such system pump house, pumps, pipes, and equipment on an annual basis upon advance reasonable notice to make sure they are well maintained. Klöckner shall take all reasonable steps to protect the integrity of the quarry from surface contaminants in compliance with federal and state laws relating to its operations and use.
8. The term of this Agreement shall be for a period of five (5) years, from the Effective Date, unless extended by Agreement of the parties in writing. The parties agree to enter into good faith negotiations to extend the term of the Agreement at least six (6) months prior to the expiration of the initial term of the Agreement.
9. Klöckner shall pay to the Town the sum of Six Thousand Dollars (\$6,000.00) per year, with the first payment due and payable upon the Effective Date of this Agreement and subsequent payments due and payable annually thereafter on the anniversary of the Effective Date.
10. This Agreement shall be binding upon and inure to the benefit of the successors, tenants, subtenants and mortgagees of the parties hereto. However, this Agreement may not be assigned or transferred by Klöckner without the prior written consent of the Town of Gordonsville Town Council.
11. Klöckner, its officers, employees, agents, licensees, etc., may not access the quarry for recreational use, fishing, hunting, boating, or any other purpose without prior approval of the Town, except as provided for herein, and Klöckner shall take all reasonable steps to ensure compliance with this provision, including but not limited to, terminating permission previously granted to any employees or hunting club.



12. Klöckner shall have this Agreement recorded in the Clerk's Office of the Circuit Court of Louisa County, VA, at its sole expense.
13. The breaching party shall be responsible for all fees and costs associated with enforcing this Agreement, including but not limited to attorney fees and court costs.
14. This Agreement reflects the entire agreement between the parties hereto, the Agreement shall be construed according to the laws of the Commonwealth of Virginia, this Agreement may only be amended by written agreement signed by both parties; and, venue for any dispute shall lie in Orange County, Virginia.
15. This Agreement was approved by the Town of Gordonsville Town Council at its meeting held on January 30, 2016.

TOWN OF GORDONSVILLE, VIRGINIA

By: Deborah S. Kendall

Title: Town Manager

Date: April 18, 2016

AGREED:

Angela M. Scolforo  
Angela M. Scolforo, Town Attorney

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Orange, to-wit:

I, Janet W. Jones, a Notary Public in and for the City/County and State aforesaid, do hereby certify that the Town of Gordonsville by Deborah S. Kendall acknowledged the foregoing instrument before me this 18 day of April, 2016, 2016.

Janet W. Jones  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #7064903  
My Commission Expires 11/30/2016



KLÖCKNER PENTAPLAST OF AMERICA, INC.

By: Michael P. Ryan

Title: President NA

Date: April 11, 2016

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Louisa, to-wit:

I, Karen S. Dunnagan, a Notary Public in and for the City/County and State aforesaid, do hereby certify that Klöckner Pentaplast of America, Inc. by Michael P. Ryan acknowledged the foregoing instrument before me this 11 day of April, 2016.

