

NORTH CAROLINA

AGREEMENT FOR PURCHASE OF WATER

CHATHAM COUNTY

THIS AGREEMENT, made and entered into this the 17th day of February, 2020, by and between the **TOWN OF SILER CITY**, a North Carolina municipal corporation, hereinafter referred to as "Town", and **CHATHAM COUNTY**, a body politic and corporate of the State of North Carolina, hereinafter referred to as "County";

WITNESSETH:

Whereas, the County has the power and authority under the provisions of Chapter 153A of the General Statutes of North Carolina to construct and operate a water supply distribution system for the purpose of serving water users within the County through its distribution system as currently shown on the County's GIS System as of the date of this Agreement (the "County System") and to accomplish this purpose, the County will require a supply of treated water, and

Whereas, the Town has the power and authority under the provisions of Chapter 160A of the General Statutes of North Carolina to construct and operate a water supply distribution system for the purpose of serving water users within the area shown on the Town's GIS System as of the date of this Agreement in the office of the Town (the "Town Water Distribution Service Area") and to accomplish this purpose, the Town will require a supply of treated water, and

Whereas, the County receives a portion of its treated water supply from the Town and a portion from the City of Sanford ("Sanford") pursuant to separate water purchase agreements with the Town and Sanford; and

Whereas, the water purchase agreement between the County and the Town was entered into on or about the 1st day of June 2009 (the "2009 Agreement"); and

Whereas, the water purchase agreement between the County and Sanford was entered into on or about the 1st day of July 2017 a copy of which is attached hereto as Appendix 1 and incorporated herein by reference (the "Sanford Agreement"); and

Whereas, the water supply distribution systems of the County and of the Town are interconnected enabling the Town to provide treated water to the County and the County to provide treated water to the Town; and

Whereas, the County and Town desire to improve service during periods of drought or other water shortages and enhance continuity of service to current and future water users of both water supply distribution systems; and

Whereas, the Comprehensive Plan of the County seeks to facilitate economic growth and development within the incorporated areas of the County and preserve the rural nature of the unincorporated areas of the County; and

Whereas, the Town seeks to facilitate ongoing economic growth and development within its corporate limits and within the area of its water supply distribution system; and

Whereas, the County entered into the Sanford Agreement to make additional treated water available to the Town for purchase, and to assist the Town in its efforts to facilitate ongoing economic growth and development; and

Whereas, the County has agreed to sell the Town treated water upon terms and conditions consistent with the Sanford Agreement; and

Whereas, the Town has agreed to sell the County treated water upon terms and conditions consistent with the Sanford Agreement; and

Whereas, the County and the Town desire to revise the 2009 Agreement as hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises herein contained, the County and the Town agree as follows:

1. Provision of water.

- a. County: Beginning March 16, 2020, the County agrees to sell to the Town under this Agreement potable water, meeting the applicable purity standards of the North Carolina Division of Health, at the existing connection point between the County and Town lines, also known as the "delivery point(s)" and the "point(s) of interconnection", located just west of the Rocky River Bridge along Hwy 64 West in Siler City, subject to any reductions or failures of pressure or supply due to main line breaks, power failures, floods, fire, and the use of water to fight fire, earthquakes and other causes beyond the County's reasonable control. The Town may sell the water to any customer located within the Town's Water Distribution Service Area.
- b. Town: Beginning March 16, 2020, the Town agrees to sell to the County under this Agreement potable water, meeting the applicable purity standards of the North Carolina Division of Health, at the existing connection points between the County and Town lines, also known as the "delivery point(s)" and the "point(s) of

interconnection”, located just west of the Rocky River Bridge along Hwy 64 West in Siler City and at the intersection of Dan Henry Siler Rd. (SR 2117) and S. Second Ave. Extension (SR 2208), subject to any reduction or failures of pressure or supply due to main line breaks, power failures, floods, fire, and the use of water to fight fire, earthquakes and other causes beyond the Town’s reasonable control. The County may sell the water to any customer located within the County and outside the Town’s Water Distribution Service Area.

- c. Both parties agree that temporary or partial failures to deliver water shall be remedied with all possible dispatch.
 - i. In the event of an extended shortage of water or should the supply of water available to the Town be otherwise diminished, the supply of Town water available to the County shall be reduced or diminished no more than is absolutely necessary to maintain a reasonable water supply in the corporate limits. In the event of a rupture in the County System, the Town may temporarily disconnect the County at the point of delivery until the rupture has been repaired. The Town shall inform the County of any event occurring on the Town’s System which will result in significant changes in the flow or pressure of water available to the County.
 - ii. In the event of an extended shortage of water or should the supply of water available to the County be otherwise diminished, the supply of County water available to the Town shall be reduced or diminished no more than is absolutely necessary to maintain a reasonable water supply in the County’s System. In the event of a rupture in the Town’s System, the County may temporarily disconnect the Town at the point of delivery until the rupture has been repaired. The County shall inform the Town of any event occurring on the County System which will result in significant changes in the flow or pressure of water available to the Town.

2. Term. The initial term of this Agreement shall commence on the 16th day of March, 2020 and end on the 1st day of July 2024, provided, however, this Agreement shall automatically renew for additional five (5) year term, unless one party provides written notice of termination to the other party at least 365 days prior to the end of the initial term or the then current term.

3. Location.

- a. County shall provide water via a supply line at a connection point located at just west of the Rocky River Bridge along Hwy 64 West in Siler City, through the existing line currently providing water to Town.

- b. Town shall provide water via supply lines at connection points located at just west of the Rocky River Bridge along Hwy 64 West in Siler City and at the intersection of Dan Henry Siler Rd. (SR 2117) and S. Second Ave. Extension (SR 2208), through the existing lines currently providing water to County.

4. Rates, Charges, and Fees.

- a. Unit Rate: The County shall pay the Town, and the Town shall pay the County, for water sold under this Agreement at a rate equal to the City of Sanford wholesale rate – (Utility Base Model) as developed and updated by Raftelis Financial Consultants; the current rate being \$1.584 per 1,000 gallons for all water delivered through the points of interconnection (the “Unit Rate”). Pursuant to the Sanford Agreement, the current 1,000 gallon rate shall be evaluated and updated every two (2) years, after January 1, 2018. The County shall provide written notice to the Town of any proposed change in the Unit Rate amendment(s) no later than 150 days prior to the beginning of the fiscal year (July 1) for which said rate amendment(s) are proposed to go into effect. The Unit Rate shall be billed in arrears on a monthly basis. The County shall pay the Town, and the Town shall pay the County, in full no later than fifteen (15) days after receipt of the bill or the due date noted on the bill, whichever is later. Both parties shall be subject to a late payment penalty of 1% per month on unpaid balance in the event any payments are not made in a timely fashion.
- b. Capital Charge: The County and the Town agree that a Capital Charge or Rate should be established for the purpose of making such replacements, repairs, and upgrades to various portions of each party’s respective water system, including, but not limited to, pumps, pipes and valves, used for the delivery of water pursuant to this agreement. The Capital Rate shall be in addition to the Unit Rate. The Capital Rate is hereby set at \$1.05 per 1,000 gallons for water delivered through the point(s) of interconnection. The Capital Charge may be amended at any time upon mutual written agreement of the parties. The Capital Rate shall be billed and collected in the same manner as the Unit Rate.
- c. Capacity Fee: The County is obligated to pay an annual reserve capacity fee under the Sanford Agreement currently in the amount of \$164,035. The Town has agreed to pay a two-thirds (2/3) prorated share of that fee in keeping with the Sanford Agreement, and therefore agrees to pay the County annually the amount of \$109,357 to reserve capacity for the Town (“Capacity Fee”). The Capacity Fee shall be adjusted from time to time based on changes in the capacity fee under the Sanford Agreement. The Capacity Fee shall be billed prospectively in equal quarterly payments of \$27,339.25 beginning January 1, 2020 and shall be due fifteen (15) days after billing.

5. Maximum Monthly Allocation.

- a. The County shall sell the Town any amount up to a maximum monthly average of one million (1,000,000) gallons per day (1 mgd).
- b. The Town shall sell the County any amount up to a maximum monthly average of seventy thousand (70,000) gallons per day (0.07 mgd).
- c. Either party may withhold, reduce, or suspend the supply of water available to the other party in the event of emergencies, water shortages, equipment problems, or other events or conditions constituting an Event of Force Majeure as provided in Paragraph 16.

6. Overages.

- a. It will be deemed that the County has exceeded the maximum monthly average when the meter(s) for the County indicates usage over the monthly average of seventy thousand (70,000) gallons per day (0.07 mgd), without prior approval from or negotiation with the Town. When the maximum is exceeded, the County shall pay 125% of the Unit Rate for all gallons above the reserved volume of seventy thousand (70,000) gallons per day (0.07 mgd).
- b. It will be deemed that the Town has exceeded the maximum monthly average when the meter(s) for the Town indicates usage over the monthly average of one million (1,000,000) gallons per day (1 mgd), without prior approval from or negotiation with the County. When the maximum is exceeded, Town shall pay 125% of the rate for all gallons above the reserved volume of one million (1,000,000) gallons per day (1 mgd).

7. Floating re-opener. In the event either the County or the Town desires to increase its maximum monthly average allocation, the County or the Town may request the same in writing and renegotiate the terms of this Agreement as mutually acceptable to both parties. However, neither party is under any obligation to increase the maximum monthly allocation of water provided, pursuant to this Agreement.

8. Meter maintenance. The County and the Town shall each operate and maintain, at their respective expense, all necessary metering equipment at the points of delivery to measure the water delivered to the other party, and upon the written request of the County or the Town, the other party agrees to calibrate the metering equipment one time in each consecutive twelve (12) month period. If such calibration does not register an error of more than two percent (2%) above or below the test reading, the meter shall be deemed to be accurate. If the meter registers an error of more than two percent (2%) above or below the test reading, the respective bill shall be adjusted accordingly for the previous month only. If the meter shall fail to register during any monthly period, then the amount of water delivered during such period shall be deemed to be the average

monthly quantity delivered during the preceding twelve (12) months, or the minimum monthly quantity specified above, whichever is greater.

9. Annexation. In the event of subsequent annexations by the Town of any areas served by the County System, the Town shall purchase those portions of the County System within the annexed areas upon the following terms and conditions:

- a. In the event the Town shall annex an area with County transmission or distribution lines therein, the Town shall purchase such mains, valves, and equipment (collectively the "Facilities") actually located within the annexed area and all such property shall be conveyed in its then current condition, without any warranties or representation as to condition, to the Town upon payment to the County of the current fair market value of the Facilities as determined by the mutual agreement of the parties. The account of any County customer in the annexed area shall be transferred to the Town along with any deposit or record pertaining to that portion of the County System, including as built drawings, and payment and usage records, but excluding any receivables attributable thereto.
- b. The Town shall assume maintenance of that portion of the County Water System annexed upon the effective date of purchase.

10. Water conservation ordinance. The County agrees to adopt a water conservation ordinance substantially in the form of the Town's current Ordinance (a copy which is attached as Exhibit B). The County shall enforce said ordinance on all County water customers who are served with water provided by the Town. The County shall enforce the ordinance according to the various stages as enacted by the Town's Board of Commissioners.

11. Default. Any one or more of the following events shall constitute an event of default under this Agreement.

- a. The failure of either party to make payment of any amount due hereunder, which failure shall have continued for a period of fifteen (15) days after receipt of written notice from the other party that timely payment has not been made as required by this Agreement.
- b. Except in Force Majeure situations, the failure of either party to perform any of its obligations under this Agreement (except the failure to make a payment as required in subsection a. above), if such failure continues for a period of thirty (30) days after receipt by the defaulting party of written notice of such failure (the "Default Notice"). Provided, however, it shall not be considered an event of default if the default is of a nature that cannot be cured within thirty (30) days and the defaulting party has commenced action reasonably designed to cure the default within the thirty (30) day notice period; provided, further, the default shall

be cured within sixty (60) days of the date the Default Notice was received by the defaulting party.

- c. Upon the occurrence of any one or more of the above events of default, or at any time thereafter, unless the default has been cured, the non-defaulting party may, at its option, give the defaulting party written notice of the non-defaulting party's election to terminate this Agreement upon a date specified in such mailing or other notice. On the date specified in the notice this Agreement shall terminate as fully and with like effect as if the entire term of this Agreement had expired; provided, however, that the defaulting party shall continue to be liable to the non-defaulting party as hereinafter provided.
 - d. Upon any termination of this Agreement pursuant to this Paragraph 11 or at any time thereafter, the non-defaulting party may exercise and pursue any and all rights and remedies such party shall have at law or in equity, including, without limitation, specific performance and the recovery of monetary damages from the defaulting party. In addition, at its option, upon the occurrence of any one or more of the above events of default, the non-defaulting party may exercise its legal and equitable rights against the defaulting party without first having terminated this Agreement.
12. Regulations. Both the County's and the Town's obligations hereunder shall be subject to such restrictions, limitations and prohibitions, as may be applicable, as a result of contracts or agreements with, or lawful rules and regulations promulgated by, any State or Federal Department or Agency having jurisdiction over the County or Town, and their operations of their respective water systems.
13. Governing Law. This Agreement and the rights and obligations to the parties hereunder shall be construed and governed by the laws of the State of North Carolina and venue for any proceedings arising hereunder shall be in the state court of appropriate jurisdiction located in Chatham County, North Carolina.
14. Prohibition on assignment. Neither party shall sell, assign or transfer this Agreement, or any part thereof, without the express written consent of the other party, which consent may be withheld in a party's sole discretion.
15. Amendments. The provisions of this Agreement may be amended at any time upon mutual written agreement of the parties.
16. Force Majeure. It shall not be considered a breach of this Agreement and neither the County nor the Town shall be responsible for any inability to perform or any delays, damages, costs, expenses, liabilities or other consequences that may arise as a result of force majeure. An Event of "Force Majeure" is defined as any event arising from causes beyond the reasonable control of the County or the Town, including but not limited to

fire, flood, acts of God, terrorism, war, natural disaster, tornado, hurricane, civil strikes or labor disputes, riots, system failure, broken pipes, or other actions causing an inability to serve beyond the reasonable control of either party; provided, however, in order to avail itself of this provision, the party experiencing a force majeure event must take reasonable actions to remedy the consequences of the force majeure event. Temporary or partial failures to deliver water shall be remedied with all possible dispatch but shall not constitute a breach so long as such remedy is diligently being pursued.

17. Limitation of Liability. Neither party shall be liable for any condition, quality, purity, impurity, nor contamination of the water provided to the other party beyond the connection point, and after it enters into the other party's system. Each party shall take steps to ensure that the consumer receives potable water, but liability shall be limited and transferred to the other party once the water passes from one party's system to the other party's system. No party hereto shall be liable under this Agreement to any third party and each shall indemnify and hold harmless the other against any and all claims brought by third parties in their respective jurisdictions. Neither party shall be liable for water system failures of the other party.
18. No Third Party Beneficiaries. There are no Third Party Beneficiaries to this Water Purchase Agreement. The provisions of this Water Purchase Agreement shall not impart rights enforceable by any person, entity, or organization not a party to this Water Purchase Agreement.
19. Dispute Resolution. In the event of any dispute between the County and the Town hereunder, the County Manager or his/her designee on the behalf of the County, and the Town Manager or her/his designee on behalf of the Town, shall meet and attempt to resolve such dispute. If the parties are unable to resolve such dispute following the meeting of the managers or their designee, either party may by notice to the other, require the parties to submit their dispute to mediation by a mediator jointly selected by the parties. If the parties are unable to agree upon a mediator, or if the parties are unable to resolve such dispute by mediation, the parties agree that any dispute with respect to this Agreement shall be submitted to binding arbitration, under the terms which the parties shall jointly select an arbitrator and agree upon the procedures for the arbitration, and abide by the decision of such arbitrator with respect to any interpretation of this Agreement or any other matter in dispute with regard to the subject matter of this Agreement.

In the event the parties are unable to agree upon an arbitrator, each party shall select an arbitrator with knowledge and experience in public water systems, and the two (2) arbitrators thus selected shall select a third arbitrator with such knowledge and experience and the decision of a majority of the arbitrators shall be binding upon the parties with respect to their interpretation of this Agreement or any other dispute with regard to the subject matter of this Agreement. In the event the parties are unable to agree upon the procedure for the arbitration, the parties shall follow the Revised Uniform

Arbitration Act as set for in Article 45C of the North Carolina General Statutes. The cost of the arbitration shall be borne equally by the parties, except that the arbitrator(s) may award the prevailing party its cost and reasonable attorneys' fees in the event that the arbitrator(s) determines that the other party commenced or pursued the arbitration in bad faith or without just cause. Any arbitrator(s) selected shall make written findings upon which the arbitrator's decision is based and such decision shall be final and binding upon the parties and shall be enforceable between them in any subsequent legal action or proceeding. The parties agree that the decision rendered by the arbitrator(s) may be entered as a judgment in the Superior Court of Chatham County, North Carolina, or any other state or federal court having jurisdiction, with the same force and effect as any other judgment.

20. Notices. All notices hereunder shall be in writing and shall be deemed given and received when delivered in person, on the next business day following the date when placed in the custody of a recognized national courier service, mailed for next business day delivery, or three (3) days after deposit with the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, addressed as follows:

<u>County</u>	<u>Town</u>
County Manager	Town Manager
P.O. Box 1809	P.O. Box 769
Pittsboro, N.C. 27312	Siler City, N.C. 27344
919-542-8200	919-742-2323

21. Existing Agreements. This Agreement supersedes and replaces the 2009 Agreement between the parties. Other existing agreements, if any, between the Parties that are not related to the subject matter of this Water Purchase Agreement shall not be altered or affected by this Water Purchase Agreement.
22. Miscellaneous. This Agreement constitutes the entire agreement and understanding between the parties and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements, and agreements heretofore entered into between the parties with respect to the matters contained herein are merged in this Agreement. This Agreement may not be changed orally, but only by a written document signed by both parties. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, provided the assignment has been approved by both parties. The provisions of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina. The headings contained in this Agreement are solely for the convenience of the parties and do not constitute a part of this Agreement and shall not be used to construe or interpret any provisions hereof. This Agreement shall be considered for all purposes as having been

prepared by the joint efforts of the parties and shall not be construed against one party or the other as a result of preparation, substitution, submission, or other even of negotiation. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any lesser extent, such provision shall be enforceable in all such parts and to the greatest extent permissible under applicable law. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, and the parties hereto may execute this Agreement by signing any such counterpart.

IN WITNESS WHEREOF, the Chatham County has caused this instrument to be executed by the Chairman of its County Board of Commissioners, attested by its County Clerk and its seal affixed, by authority of its governing board, first duly given and the Town of Siler City has caused this instrument to be executed by its Mayor, attested by its Clerk and its municipal seal to be affixed, all by authority of its governing board, first duly given, the date first above written.

[SIGNATURE PAGE FOLLOWS]

CHATHAM COUNTY

Dan LaMontagne, County Manager

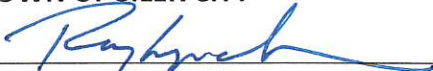
ATTEST:

Lindsay Ray, County Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Vicki McConnell, Finance Director

TOWN OF SILER CITY



Roy Lynch, Town Manager

ATTEST:



Jenifer K Johnson, Town Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.



Tina Stroupe, Finance Director

