

STATE OF NORTH CAROLINA
COUNTY OF LEE

MEMORANDUM OF UNDERSTANDING
FOR A JOINT WATER TREATMENT
PRELIMINARY ENGINEERING REPORT

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), made and entered into this _____ day of _____, 2020, by and between the COUNTY OF CHATHAM, one of the one hundred counties of the State of North Carolina and a body both politic and corporate, herein referred to as “County”, and the CITY OF SANFORD, a North Carolina Municipal Corporation, herein referred to as “City”, each additionally referred to herein as either a “Party”, and collectively as the “Parties”.

WITNESSETH:

WHEREAS, this MOU is undertaken due to the mutual interest of both entities to determine if a collaborative water treatment plant expansion is a viable solution for future water treatment needs; and

WHEREAS, the City of Sanford, located in Lee County, currently owns and operates a municipal water treatment plant and distribution system to provide potable water service for residential and commercial consumers, within the City corporate and county limits; and

WHEREAS, the City and County desire to explore mutually beneficial options for expanding future water quantity needs for both Parties; and

WHEREAS, a cost sharing arrangement and the utilization of resources and personnel from both entities will maximize the opportunity for a successful program; and

WHEREAS, the Town of Holly Springs and/or Town of Fuquay-Varina may also participate in this project.

NOW, THEREFORE, the Parties hereto agree as follows:

As a result of increasing water demands and projections, the City has determined that additional water treatment capacity will be required within the next 25 years, due to expected population growth. The City and County have agreed in principle to embark on a water treatment preliminary engineering report to determine if a joint water treatment facility expansion is a feasible solution to the future water treatment needs.

1. Program of Work

The Parties hereto have agreed that City will engage an engineering firm to conduct a water treatment preliminary engineering report on behalf of the Parties for a not to exceed amount of \$655,000.

2. Shared Costs

To mutually share in the costs of conducting the joint water treatment preliminary

engineering report, the entities who benefit from the undertaking shall share in the costs.

County of Chatham shall contribute \$55,000.00 for their portion of the preliminary engineering report costs.

3. Areas of Collaboration

The Parties shall mutually agree to work together to do the following:

- a. Participate in the joint report workshops and meetings;
- b. Cooperate in distributing available information to the other party as well as to any third parties as required;
- c. Review infrastructure and water treatment alternatives;
- d. Develop a Preliminary Engineering Report;
- e. Determine a viable solution.

4. Term of the MOU

This MOU is effective upon full execution by the Parties, and will remain in full force and effect for a period of one year. No later than June 30, 2021, the MOU may be reviewed and renewed for an additional one (1) year period by mutual consent of the Parties in writing.

5. Termination

Each party reserves the right to terminate this MOU upon thirty (30) days' written notice to the other. In addition, if either party fails to fulfill in timely and proper manner the obligations under this MOU, for any reason, the other party shall have the right to terminate this MOU, by giving written notice, and the termination will be effective upon receipt.

6. Meetings

To accomplish these objectives, the Parties' Staff may meet once per month for the purposes of program planning and monitoring, evaluating outcomes, and to review and ensure that each partner is in compliance with this Memorandum of Understanding.

7. Notice

All notices or other communications arising hereunder shall be sent to the following:

City of Sanford
Attn: Victor Czar, Director
Department of Public Works
P.O. Box 3729
Sanford, NC 27330
Phone 919-777-1117
email: victor.czar@sanfordnc.net

County of Chatham
Attn: Larry Bridges, Director
Department of Public Utilities
P.O. Box 910
Pittsboro, NC 27312
Phone 919-542-8238
email: larry.bridges@chathamnc.org

8. Amendment

Any amendment to this MOU to be effective, must be in writing, signed by both Parties, and executed with the same formality and approvals as the foregoing MOU.

9. No Waiver of Immunity

Nothing herein shall be construed to mandate purchase of insurance by the City, or to, in any other way, waive the defense of sovereign or governmental immunity from any cause of action alleged or brought against City, for any reason, if otherwise available as a matter of law.

Nothing herein shall be construed to mandate purchase of insurance by the County, or to, in any other way, waive the defense of sovereign or governmental immunity from any cause of action alleged or brought against the County, for any reason, if otherwise available as a matter of law.

10. Non-Appropriation

City and County are governmental entities, and the MOU validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that funds are not available and not appropriated to the program specified in this MOU, then this MOU shall automatically expire without penalty to either party.

In the event of a legal change in either party's statutory authority, mandate, and mandated functions, which adversely affects the authority to continue performing obligations under this MOU, then this MOU shall automatically expire without penalty to either party.

11. No Third-Party Beneficiaries

This MOU is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the Parties hereto, and shall not confer any rights or remedies upon any person or entity other than the Parties hereto.

12. Applicable Law

All matters relating to this MOU shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions.

13. Relationship of Parties

The County and City are, and shall remain independent contractors, with respect to any service or function performed under this MOU. Except as provided for in this MOU, each party shall select the means, method, and manner of performing their respective services herein. Each party is an independent contractor and shall not represent itself or be deemed as an officer, agent, or employee of the other party, for any purpose. Nothing under this MOU is intended or should be construed in any manner, to create a partnership or venture between the Parties. Each party

agrees that it will obey all State and Federal statutes, rules, and regulations which are applicable to any responsibility or duty outlined herein.

14. Applicability of North Carolina Public Records Law

Notwithstanding any other provisions of this MOU, this MOU and all materials submitted by the parties to one another are subject to the public records laws of the State of North Carolina and it is the responsibility of the submitting party to properly designate materials that may be protected from disclosure under North Carolina law as such and in the form required by law prior to the submission of such materials to the other party. The parties understand and agree that the City and the County may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this MOU. To the extent that any other provisions of this MOU conflict with this paragraph, the provisions of this section shall control.

15. Force Majeure

Except as otherwise provided in any environmental laws, rules, regulations, or ordinances applicable to the parties and the services performed under this MOU, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the MOU must take reasonable measures and implement reasonable protections when a weather event, otherwise defined as a force majeure event, is forecast to be eligible to be excused from the performance otherwise required under this MOU by this provision.

16. Non-Discrimination

To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this MOU.

17. Advertising

The parties shall not use the existence of this MOU, or the name of the other, as part of any advertising without the prior approval of the other party.

18. Miscellaneous

The parties shall be responsible for the proper custody and care of any property furnished or purchased by the other party for use in connection with the performance of this MOU, and will reimburse the other party for the replacement value of its loss or damage.

19. Severability

If any provision of this MOU shall be determined to be unenforceable by a court of

competent jurisdiction, such determination will not affect any other provision of this MOU.

20. Counterparts

This MOU may be executed in several counterparts, each of which shall be deemed an original.

21. Incorporation of Documents/Complete Agreement

This MOU, and any documents incorporated below, represent the entire Agreement between the parties and suspend all prior oral or written statements, or Agreements.

IN WITNESS WHEREOF, being duly authorized, the County has executed the foregoing with the signature of its County Manager, attested by its Clerk, with the official seal affixed, and, being duly authorized, the City has executed with the signature of its City Manager, attested by its Deputy City Clerk, with the official seal affixed, the day and year first above written.

COUNTY OF CHATHAM

CITY OF SANFORD

By: _____
Dan LaMontagne, County Manager

By: _____
Hal Hegwer, City Manager

ATTEST:

ATTEST:

By: _____
Lindsay Ray, Clerk
(Affix Seal)

By: _____
Vicki R. Cannady, Deputy City Clerk
(Affix Seal)

THIS INSTRUMENT APPROVED AS TO FORM:

Bob Hagemann, County Attorney

Susan C. Patterson, City Attorney

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

By: _____
Vicki McConnell, Finance Director

By: _____
Beth T. Kelly, Finance Director