

INTERLOCAL AGREEMENT

Pursuant to N.C. Gen. Stat. §160A-461, this Interlocal Agreement made and entered into the ____ day of February, 2021 (the “Effective Date”), by and between Chatham County, a body politic and corporate of the State of North Carolina, with a mailing address of Post Office Box 1809, Pittsboro, North Carolina 27312 (“Chatham”), and the Town of Siler City, a North Carolina municipal corporation with a mailing address of Post Office Box 769, , Siler City, North Carolina 27344 (“Siler City”). Either Chatham or Siler City may be referred to herein as a “Party” or collectively as the “Parties”.

WITNESSETH

WHEREAS, the Parties are interested in jointly providing needed capital improvements to the Siler City Wastewater Treatment Plant (“Plant”), including increasing the Plant’s daily treatment capacity of wastewater, and enabling the Plant’s treatment process to remove certain levels of nutrients from the treated wastewater stream that is introduced into Loves Creek and the Rocky River; and

WHEREAS, the Parties are authorized pursuant to N.C. Gen. Stat. §160A-461 to enter into Interlocal Agreements to cooperate in performing governmental activities; and

WHEREAS, it is in the public interest of the citizens of Chatham County and the Town of Siler City to enter into an agreement for the purposes noted herein below;

NOW THEREFORE, it is agreed by the Parties, for the mutual benefits to be derived hereunder, that:

1. **Background and General Terms.** In order to support ongoing economic growth in Siler City, including attracting a significant industrial facility to the Chatham-Siler City Advanced Manufacturing (CAM) Site, and in order to enhance processing capability to reduce adverse environmental impacts of increased industrial presence within the Siler City wastewater service area, capital improvements and wastewater treatment process optimizations are necessary at the Plant. These physical and process modifications are incorporated into the Siler City Wastewater Treatment Plant Improvement Project (“Project”), which is comprised of two (2) distinct phases (Phase 1 and Phase 2). Phase 1, or “Nutrient Reduction,” makes various capital improvements to the Plant for the removal of nutrients from the treated wastewater stream prior to its discharge point to the receiving waters of the Plant’s treated effluent product. Phase 2, or “Capacity Expansion and Nutrient Reduction,” makes capital improvements to the Plant that will increase the daily treatment capacity of the Plant by at least two million gallons per day (2mgd) and further reduce the nutrient loading from the effluent discharge of the Plant to the receiving waters of Plant’s discharge. Siler City has received a \$2,000,000 grant from the Golden LEAF Foundation (“Golden Leaf”) and a \$3,000,000 grant from the North Carolina Department of Commerce for the construction of the Project.
2. **Purpose of Interlocal Agreement.** The purpose of this Interlocal Agreement is, among other things, to set forth the terms and conditions of the agreement between Siler City and Chatham for funding assistance in the amount of seven hundred fifty thousand (\$750,000) (Chatham Project Contribution), from Chatham to Siler City, for the cost of the Project as outlined above, from preliminary engineering through completion of the Project. The Parties agree that this Interlocal Agreement establishes an undertaking pursuant to Part 1 of Article 20 of Chapter 160A of the North Carolina General Statutes for the use and benefit of the public and private consumers residing within the boundaries of the Parties.

3. **Project Cost.** All expenditures from preliminary design through completion of construction of the Project to provide the necessary improvements to the Siler City Wastewater Treatment Plant, including, but not limited to, design, construction, and other related costs and other related expenditures shall be the Project Cost. Except as set forth below, the Chatham Project Contribution shall be divided equally between Phase 1 and Phase 2 of the Project (\$375,000 contribution for each of the two phases). The Chatham Project Contribution shall be administered to Siler City on a 50% match (dollar-for-dollar) reimbursement schedule. Siler City shall submit a request to Chatham for reimbursement for each invoice, or group of invoices, received with respect to the foregoing, and shall include a copy of the invoice(s) subject to the reimbursement request. Reimbursement requests shall include documentation of sufficient type and detail to delineate and itemize eligible expenses according to the respective phase of the Project for which the expenses are incurred and assigned. Chatham shall reimburse Siler City, as a 50% match contribution, for all eligible Project Costs up to \$1,500,000 (maximum Chatham contribution of \$750,000), provided that the Project Costs were incurred prior to the completion of the Project. Payment shall be due from Chatham to Siler City within thirty (30) days of receipt of Siler City's requisition. Any balance of the Chatham Project Contribution remaining, following the completion of Phase 1 shall be available to be utilized for eligible Project Costs associated with the completion of Phase 2 of the Project. Notwithstanding the foregoing, Siler City may, with detailed justification for doing so, request Chatham County to provide more than 50% of its commitment in Phase 1, in which case the Chatham County Board of Commissioners in its sole discretion may agree to do so.
4. **Reporting.** Until such time as the Project is completed, Siler City agrees to submit biannual reports (the "Reports") to Chatham that detail the Project's status, which includes, but is not limited to, the progress of Project milestones respective of each phase herein described for the reporting period, updated milestone completion projections for each phase herein described, and any other information or circumstance that may materially influence the completion of one or more of the phases of the Project as herein described. The Reports shall be transmitted in writing to Chatham no later than December 31 of each year (Report 1) and no later than June 30 of each year (Report 2), beginning June 30, 2020.
5. **Existing Agreements.** Existing agreements, if any, between the Parties that are not related to the subject matter of this Interlocal Agreement shall not be altered or affected by this Interlocal Agreement. The Parties agree that this Interlocal Agreement amends and completely restates and replaces the Interlocal Agreement between the Parties dated as of February 17, 2020.
6. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Interlocal Agreement. The provisions of this Interlocal Agreement shall not impart rights enforceable by any person, entity, or organization not a party to this Interlocal Agreement.
7. **Assignment.** This Interlocal Agreement shall not be assigned or transferred in whole or in part without the prior written consent of both Parties, which consent may be withheld in a Party's sole discretion.
8. **Term.** This Interlocal Agreement shall run for a term equal to the time of completion of the Project, which shall be signified by the transmittal of a final biannual report exhibiting, with sufficient evidence, the completion of the Project as herein described.
9. **Dispute Resolution.** In the event of any dispute between Chatham and Siler City hereunder, the Town Manager or his or her designee on the behalf of Siler City and the County Manager or her or

his designee on behalf of Chatham 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 designees, 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 Interlocal Agreement shall be submitted to binding arbitration, under the terms of 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 the Interlocal Agreement, or any other matter in dispute with regard to the subject matter of this Interlocal 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 wastewater treatment systems and the two (2) arbitrators thus selected shall select a third arbitrator, and the decision of a majority of the arbitrators shall be binding upon the Parties with respect to their interpretation of this Interlocal Agreement, or any dispute with regards of the subject matter of this Interlocal Agreement. In the event the Parties are unable to agree upon the procedures for the arbitration, the Parties shall follow the Revised Uniform Arbitration Act as set forth in Article 45C of Chapter 1 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 attorney's fees in the event that the arbitrator(s) determines that the Parties 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.

10. **Miscellaneous**. This Interlocal 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 Interlocal Agreement. This Interlocal 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 Interlocal Agreement shall be valid unless in writing and signed by the Party against whom it is sought to be enforced. The provisions of this Interlocal 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 Interlocal 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 Interlocal Agreement are solely for the convenience of the Parties and do not constitute a part of this Interlocal Agreement and shall not be used to construe or interpret any provisions hereof. This Interlocal 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 event of negotiation. The invalidity or unenforceability of any term or provision of this Interlocal Agreement shall not affect the validity or enforceability of any other provisions of this Interlocal 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 Interlocal 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 Interlocal Agreement by signing any such counterpart.

IN WITNESS WHEREOF, Chatham County and the Town of Siler City have executed this Interlocal Agreement effective as of the day and year first written above.

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

Vicki McConnell
Finance Director
Chatham County

CHATHAM COUNTY

By: _____
Name: Dan LaMontagne
Title: County Manager

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

Tina Stroupe
Finance Director
Town of Siler City

TOWN OF SILER CITY

By: _____
Name: Roy Lynch
Title: Town Manager