

**INTERLOCAL AGREEMENT BETWEEN CHATHAM COUNTY AND THE CITY
OF DURHAM RESPECTING WATER SALES**

This agreement ("this Agreement") is made, dated, and entered into this 21st day of August 2008, between the County of Chatham ("Chatham"), a N. C. body politic and corporate, and the City of Durham, ("Durham"), a North Carolina municipal corporation.

BACKGROUND. Chatham and Durham are parties to the following agreement, which expires on September 30, 2010: Agreement between Chatham and Durham Establishing Conditions for the Purchase of Water, dated October 25, 1999, as amended by Amendment No. 1 to Agreement between Chatham and Durham Establishing Conditions for the Purchase of Water, dated July 30, 2003. This Agreement will terminate that 1999 agreement as amended and replace it with a new agreement.

1. **Termination of Existing Agreement.** The following is terminated: Agreement between Chatham and Durham Establishing Conditions for the Purchase of Water, dated October 25, 1999, as amended by Amendment No. 1 to Agreement between Chatham and Durham Establishing Conditions for the Purchase of Water, dated July 30, 2003.

2. **Purposes of this Agreement.** This Agreement is intended to make arrangements for Chatham and Durham to continue to assist each other in meeting the water needs of their citizens and other local governments. It is also intended to make arrangements for Chatham and Durham to provide mutual support through the sale or exchange of water to each other, both in the normal course of operating and in the event of a water supply emergency in Chatham or Durham. It is also intended to establish terms for the purchase of water by either Unit; and provide for other related matters.

3. **Definitions.** The following definitions apply to this Agreement except where the context does not allow.

<i>Term or expression</i>	<i>Meaning or usage</i>
"deficient quantity"	refers to supplying less water than requested or required
"Designated Representative"	the individual named in writing from time to time by Durham and Chatham respectively to call on the other Unit to supply water pursuant to section 6. A Unit may name more than one Designated Representative with authority to so act
"facilities"	equipment, fixtures, and structures for the transmission of water, including lines, mains, meters, pumps, and valves
"include," "including," etc.	include, including, etc. without limitation
"middleman"	any person operating a water utility through whose facilities water moves from a seller of water to a buyer of the water. The water utility may be a Unit.
"person"	Includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities
"Service"	water service
"shall"	is mandatory
"substandard quality"	water that is not in compliance with applicable State or Federal standards, laws, orders, and regulations relating to drinking or potable water.
"third party"	any person other than Chatham and Durham
"Unit"	Chatham or Durham
"water"	potable water. This definition does not limit the provisions of section 16 (Indemnification)

4. **Duration.** This Agreement shall take effect at 12:01 AM on July 1, 2008. Its duration shall continue until midnight on June 30, 2028. The governing body of each Unit has determined that duration to be reasonable.

5. Installing facilities in other's Service areas. This Agreement does not prohibit either Unit from installing facilities within the Service area of the other Unit for the purpose of serving the installing Unit's customers. These facilities shall not be used to serve customers located within the other Unit's Service area, except by written agreement of the managers of Chatham and Durham. The Durham city manager has authority to make such agreements on behalf of Durham, and the Chatham county manager has authority to make such agreements on behalf of Chatham. Such written agreements are intended solely to allow for extremely limited service or temporary service, and shall not be used to permanently alter the boundary line, which may be altered only pursuant to written agreement as allowed by other provisions of this Agreement. The facilities installed pursuant to this section shall not be subject to section 8(a) (Ownership of Facilities).

6. One Unit is buyer and the other Unit is seller. (a) Whenever either Unit, through its Designated Representative, notifies the other Unit that it desires to buy water and states the desired quantity (the "Amount Requested"), the notified Unit shall sell the Amount Requested to the requesting Unit, subject to subsection (c). The Amount Requested shall be stated in units of millions of gallons per day and shall be no greater than the amount of water that can be supplied by the interconnection infrastructure. The notification may be oral but shall be followed up promptly with a written verification pursuant to section 18 (Notice).

(b) The water may be supplied by direct interconnection between the Units' systems, or if agreed to by the Units, through one or more middlemen. In the latter case, the Units recognize that appropriate agreements with middlemen will be needed.

(c) The seller shall use its best efforts to supply the Amount Requested. Section 13 (Right to Suspend or Reduce Supply of Water) addresses the right of the seller to supply less than the Amount Requested.

(d) The buyer shall pay the seller for the water that is supplied. Section 10 (Water Charges and Billing) addresses payment matters.

7. One Unit is buyer or seller and the other Unit acts as a middleman. (a) When a Unit (the requesting Unit), through its Designated Representative, its county or city manager, or the director of the department that treats water to make it potable for sale to that Unit's residents, notifies the other Unit (the middleman Unit or prospective middleman Unit) that the latter Unit is to act as a middleman for the transmission of water, the prospective middleman Unit shall allow its water system to be so used. The requesting Unit may be the seller of the water to a third party or it may be the buyer of the water from a third party. There may be one or more additional middlemen for any of these transactions. For instance, in one transaction, Chatham may be the seller, Durham and two other third parties may be middlemen, and another third party may be the buyer.

(b) This Agreement does not require the prospective middleman Unit to spend money or use other resources of the Unit to make connections or otherwise change its facilities to accommodate any interconnection to facilitate the transmission.

(c) If water is supplied to a Unit acting as a middleman, and if the other Unit as seller has designated an amount of water that it intends the middleman Unit to transmit to another middleman or to the buyer, it is agreed that the Unit acting as a middleman shall transmit an amount that closely approximates the designated amount. The Unit acting as a middleman shall use its best efforts to transmit that water but only if the quality of the water is satisfactory, the conveyance does not negatively impact the middleman's service to its customers and the buyer is in compliance with the terms of its contract with the middleman Unit, including payment.

(d) When a Unit is seller of water and the other Unit is a middleman, the seller shall not look to the middleman Unit for payment for the water.

(e) If the requesting Unit is to be the buyer of the water, the prospective middleman Unit shall not be required to act as middleman until it has entered into an agreement with the buyer or some other person,

which agreement must be satisfactory to the parties thereto, to compensate the middleman Unit for its costs of transmitting the water. Those costs may include construction of facilities, pumping, valve operation, meter-reading, flushing, treatment, and administration of the transmission.

(f) If the requesting Unit is to be the seller of the water, the prospective middleman Unit shall not be required to act as middleman until it has entered into an agreement with the buyer or some other person, which agreement must be satisfactory to the parties thereto, to compensate the middleman Unit for its costs of transmitting the water. Those costs may include construction of facilities, pumping, valve operation, meter-reading, flushing, treatment, and administration of the transmission.

8. Ownership of Facilities. (a) Durham shall become the owner of and be responsible for the operation and maintenance of all facilities located on the Durham side of the interconnection points. Chatham shall own and be responsible for the operation and maintenance of all facilities located on the Chatham side of the interconnection points. See section 5 (Installing facilities in Service areas) and other subsections of this section for exceptions.

(b) Durham and Chatham shall agree as to ownership and maintenance of interconnection facilities. The Durham city manager has authority to make such agreements on behalf of Durham, and the Chatham county manager has authority to make such agreements on behalf of Chatham, provided that the agreements shall make the decision as to ownership and maintenance so as to allow for economical and efficient operation of the interconnection facilities.

(c) Durham shall be responsible for the operation and maintenance of the meter, located within the interconnection facilities, which supplies water to Chatham. Chatham shall be responsible for the operation and maintenance of the meter, located within the interconnection facilities, which supplies water to Durham. The ownership and maintenance of any bi-directional meter which could serve either Chatham or Durham will be as agreed in an agreement between the Units. The Durham city manager has authority to make such agreements on behalf of Durham, and the Chatham county manager has authority to make such agreements on behalf of Chatham, provided that the agreements shall make the decision as to ownership and maintenance so as to allow for economical and efficient operation of the interconnection facilities.

(d) Notwithstanding subsection (a), it is agreed that Chatham or Durham may build, in the other Unit's system, facilities that facilitate the transfer of water to the building Unit's water system, but only if those facilities are first approved by that other Unit and are built according to specifications required for the system where those facilities are constructed. The Unit that builds such facilities shall own them and shall maintain them in good working order.

9. Water Use Restrictions. During any time that a Unit has water use restrictions in effect and is supplying water to the other Unit as buyer pursuant to this Agreement, the buyer-Unit shall impose restrictions at least equal to those being imposed by the seller, or the seller may withhold some or all of the Amount Requested until such restrictions are placed into effect. The water use restrictions referred to in this section include permanent water use restrictions and include voluntary restrictions.

10. Water Charges and Billing

(a) Rate. The price that either Unit as buyer shall pay the other Unit as seller shall be the same water rate, metered in units of hundred cubic feet (CCF). The rate shall be Durham's Tier 1 base single-family residential rates in effect at the time the water service is furnished. If Durham changes its rate structure so that it no longer has a rate that is a base single-family residential rate, the rate that is applied to most residential households in the Unit will be deemed to be its base single-family residential rate. For purposes of that determination, a household is the person being billed for water.

(b) Billing/Payment. Each Unit when acting as a buyer shall pay the Unit acting as seller for water received as a buyer. The selling Unit shall invoice the buying Unit on a monthly basis. The buyer shall add a late payment fee of one (1%) percent per month to the amount due for any payment made more than 20 days after the billing date.

(c) Payment Options. This subsection (c) applies to transactions under this Agreement in which the Units are the buyer and the seller; that is, neither Unit is a middleman. In this subsection (c), a Unit is a “debtor” when the outstanding balance for its purchases of water from the other Unit exceeds the outstanding balance for its sales of water to the other Unit. Purchases and sales shall be offset against each other in order to calculate the net balance.

(i) Except as provided by subsection (ii) and subsection (iii), the Unit that is the debtor shall have the option to supply water to the other Unit instead of money to pay some or all of the net balance. Any such payments by water instead of money shall not be subject to subsection (b).

(ii) When the net balance exceeds \$100,000, the option described in subsection (i) shall apply to the portion above \$100,000 only to the extent that the Units agree. In the absence of such an agreement, the debtor shall make monetary payment, instead of by use of subsection (i), of the entire net balance. The Durham city manager has authority to make such agreements on behalf of Durham, and the Chatham county manager has authority to make such agreements on behalf of Chatham.

(iii) By each June 30, each unit shall pay to the other Unit all net balances existing on each June 10. Payment made within that 20-day period shall be made pursuant to subsection (i) or by monetary payment.

11. Intermittent Water Sales. Chatham and Durham recognize that, from time to time, each Unit may need water because of changes in operation, installation of facilities, emergencies, or problems. Under these circumstances, the Durham city manager has authority to make agreements to sell or to buy water on behalf of Durham, and the Chatham county manager has authority to make agreements to sell or to buy water on behalf of Chatham. The authority of the respective managers to make those agreements applies only to the extent that the buying Unit is acting expeditiously to take care of the situation, but in any event, no such agreement may last longer than one year.

12. Determination of Quantity Supplied. The amount of water a Unit as seller supplies to a Unit as buyer for which the buyer shall pay the seller shall be measured by the seller's meter located at or near the interconnection point between the seller and buyer's systems. The seller shall read the meter at least monthly and promptly report the readings to the buyer. When Unit as buyer receives water through a designated third party middleman, the quantity of water supplied shall be as determined by agreement between the buyer and the third party middleman.

13. Right to Suspend or Reduce Supply of Water.

(a) Either Unit acting as seller may withhold, reduce, or suspend the supply of water in the event of emergencies, water shortages, equipment problems, or other events or conditions that the Unit-seller determines reduce the amount of water available for sale or the Unit-seller's ability to supply such water.

(b) A Unit acting as seller may suspend supplying water to the buyer as long as the buyer is in breach of its obligation to pay the seller for water.

(c) A Unit acting as middleman may withhold, reduce, or suspend the transmission of water in the event of emergencies, water shortages, equipment problems, or other events or conditions that the Unit-seller determines reduce the middleman's ability to transmit such water.

(d) A Unit acting as seller or buyer in a transaction where the other Unit is acting as middleman may withhold, suspend, or terminate supplying water at any time without liability to the Unit acting as middleman for such suspension or termination.

(e) A Unit acting as buyer may require the Unit acting as seller to withhold, reduce, or suspend supplying water in the event of emergencies, water shortages, equipment problems, or other events or conditions that the Unit-buyer determines reduce the amount of water needed by the buyer or the buyer's ability to receive the water.

14. Regulatory Compliance.

(a) Selling Unit responsible for treatment of water. A Unit that supplies water to the other Unit as buyer understands that the buying Unit is not expected to treat the water before it is consumed by the buying Unit's customers. When a Unit as seller supplies water to the other Unit as buyer, the seller shall be responsible for securing all necessary Federal and State approvals and for compliance with all applicable Federal and State regulations, laws, orders, statutes, ordinances, codes, and rules relating to the quality and treatment of the water.

(b) Buying Unit responsible for transfer. When a Unit as seller supplies water to the other Unit as buyer, the buyer shall be responsible for securing all necessary Federal and State approvals and for compliance with all applicable Federal and State regulations, laws, orders, statutes, ordinances, codes, and rules relating to the transfer of the water.

(c) Prospective middleman may require assurances. When a Unit as buyer or seller requests the other Unit to act as middleman, the middleman Unit may require the requesting Unit or the third party seller or buyer to be responsible for securing all necessary Federal and State approvals and for compliance with all applicable Federal and State regulations, laws, orders, statutes, ordinances, codes, and rules relating to the transfer of the water. If the prospective middleman Unit does not obtain an agreement that it finds to be satisfactory, it may refuse to act as middleman.

15. Committed Water Sales from Durham to Chatham

(a) By each March 1, the Chatham County Manager or designee shall notify the Durham City Manager or designee the daily quantity of water that Chatham will commit to buy from Durham for the following year (that is, beginning the immediately following April 1), and Durham will commit to sell to Chatham the following year. The Durham city manager has authority to make such agreements on behalf of Durham, and the Chatham county manager has authority to make such agreements on behalf of Chatham. That quantity, stated as millions of gallons per day (MGD), is the "Actual Daily Amount." The Maximum Actual Daily Amount that Durham will commit to sell Chatham is specified in column 3 of the table in subsection (b). In any given year, the Actual Daily Amount that Durham commits to sell to Chatham, in the annual determinations referred to in the first sentence of this subsection (a), may vary as specified in column 2 of the table in subsection (b). The sales under this subsection (a) shall cease at the earlier of when (i) a second water intake on the western shore of Jordan Lake is put in operation and an associated water treatment plant is put in service, or (ii) Chatham completes an expansion of its water treatment plant and main transmission line. If the Chatham County Manager (or designee) fails to notify the Durham City Manager (or designee) by any March 1, the default Actual Daily Amount for the following year (that is, beginning the immediately following April 1) shall be the Actual Daily Amount from the current year. The Managers have the authority to reach an agreement within the limits of stated in column 2 when any March 1 deadline is missed.

(b) The Actual Daily Amount referred to in subsection (a) shall be within the ranges shown in the following table:

Period For Sales	Durham's water sales commitment	Maximum Actual Daily Amount in MGD
4-1-2009 through 3-31-2011	0 – 1 MGD	1
4-1-2011 through 3-31-2013	0 -2 MGD	2
4-1-2013 through 3-31-2015	0 -3 MGD	3

4-1-2015 through 3-31-2028	0 -4 MGD	4
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(c) In supplying water under this section 15, Durham shall not be required to supply water at a gallons/minute rate greater than the Actual Daily Amount (gallons/day) divided by 1440 (minutes/day).

(d) For all sales from Durham to Chatham made under this section 15, Durham may not withhold, reduce, or suspend the supply of water except temporarily in the event of emergency, such as equipment problems. In case of actions taken pursuant to the preceding sentence, Durham shall immediately notify Chatham of the action and shall make every reasonable effort to address the situation, as quickly as possible, so that it may cease the action taken pursuant to the preceding sentence.

16. Indemnification.

(a) As used in this section 16:

(1) Definitions. "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item). "Indemnitees" are the non-indemnifying Unit's officers, officials, independent contractors, agents, and employees, excluding the indemnifying Unit.

(2) Survival. This section 16 (Indemnification) shall remain in force despite termination of this Agreement, whether by expiration of the term or otherwise.

(3) Limitations of the indemnifying Unit's obligation. If this section 16 is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then this section 16 shall not require the indemnifying Unit to indemnify or hold harmless the other Unit or its Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of the non-indemnifying Unit or Indemnitees.

(b) A Unit that breaches this Agreement or is negligent in performing under this Agreement shall defend, indemnify, and save harmless the other Unit and Indemnitees for Charges arising from the breach or such negligence.

17. No third party beneficiaries. This Agreement is intended for the benefit of Chatham and Durham and not any other person.

18. Notice. (a) Unless otherwise stated in this Agreement, all notices referred to in this Agreement shall be in writing and shall be given either by personal delivery, email, fax, or certified United States mail, return receipt requested, addressed as follows:

To Durham:

Director of Water Management
City of Durham
101 City Hall Plaza
Durham, NC 27701

The fax number is (919) 560-4479.

If the sender uses email, the sender is responsible for ascertaining the name and email address of the then-current director. At the time of the making of this Agreement, email to the director is to be addressed to both of the following: vicki.westbrook@durhamnc.gov and don.greeley@durhamnc.gov

To Chatham:

Chatham County Manager

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Chatham County
P.O. Box 1809
Pittsboro, NC 27312
The fax number is (919)542-8272

At the time of the making of this Agreement, email to the county manager and his alternate are the following: charlie.horne@chathamnc.org – alternate email: david.hughes@chathamnc.org

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either Unit by notice given to the other Unit. A notice shall be deemed given at the time of actual delivery, if it is personally delivered or sent by email or fax, unless the sender's email system or fax indicates that the email or fax was not received. If the notice is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which it is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

19. Appointment of Personnel. The Durham City Manager shall designate persons to carry out Durham's obligations under this Agreement. The Chatham County Manager shall designate persons to carry out Chatham's obligations under this Agreement.

20. Forum and venue. Unless the Units otherwise agree, the sole forum and venue for all litigation arising out of this Agreement shall be in the county of the Unit named as defendant, in the North Carolina General Court of Justice. The Durham city manager has authority to make such agreements on behalf of Durham, and the Chatham county manager has authority to make such agreements on behalf of Chatham.

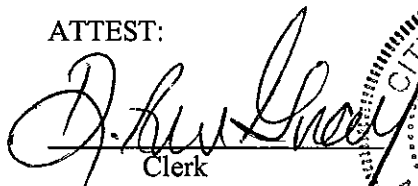
21. Principles of Interpretation. In this Agreement, unless the context requires otherwise: (a) References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation, as adopted from time to time. References to contracts and agreements shall be deemed to include all amendments to them, as adopted from time to time. (b) References to a "Section" or "section" shall mean a section of this agreement. (c) Titles of sections and paragraphs in this Agreement are for convenience only, and shall not be construed to affect the meaning of this Agreement.

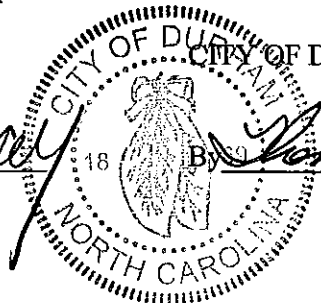
22. Amendments. Entire Agreement. Before amending this agreement, each Unit shall, if required by applicable law, give notice, conduct a public hearing, and adopt an ordinance. A modification of this Agreement is not valid unless signed by both Units and otherwise in accordance with requirements of law. Further, a modification is not enforceable against Durham unless the City Manager or a deputy or assistant City Manager signs it for Durham. A modification is not enforceable against Chatham unless the County Manager or a deputy or assistant County Manager signs it for Chatham.

23. Termination. This Agreement may be terminated by written agreement of both Units. Either Unit may terminate this Agreement because of substantial breach of this Agreement by the other Unit provided that the terminating Unit has given 90 days' written notice to the breaching Unit and the breaching Unit has not cured the breach during that period. This section 23 does not limit the rights to enforce this Agreement through any other action or remedy. Whether this Agreement terminates as provided in section 4 (Duration) or earlier, it is agreed that on termination, all obligations that are still executory on both sides are discharged but any right based on prior breach or performance survives.

IN WITNESS WHEREOF, Durham and Chatham have caused this Agreement to be executed by their duly authorized respective officers.


ATTEST:


Clerk



CITY OF DURHAM

By


City Manager

8/19/08

ATTEST:

CHATHAM COUNTY

Sandra B. Sublett
Clerk

By Chad J...

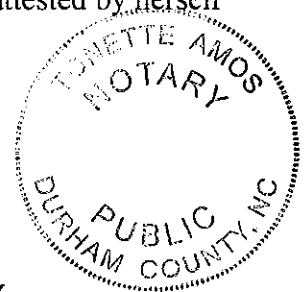
ACKNOWLEDGMENT BY CITY OF DURHAM

State of North Carolina

County of Durham

I, a notary public in and for the aforesaid county and state, certify that D. Ann Gray personally appeared before me this day, and acknowledge that she is Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its corporate name by its City Manager, sealed with its corporate seal, and attested by herself as its said City Clerk or Deputy City Clerk.

This the 21 day of Aug, 2008



ACKNOWLEDGMENT BY CHATHAM COUNTY

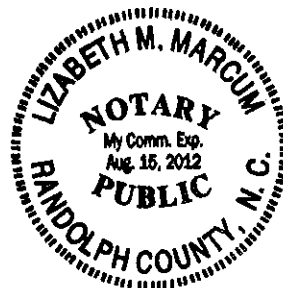
State of North Carolina

County of Chatham

I, a notary public in and for the aforesaid county and state, certify that Sandra B. Sublett personally appeared before me this day, and acknowledge that she is Clerk of the County of Chatham, and that by authority duly given and as the act of the County, the foregoing contract was signed in its corporate name by its County Manager, sealed with its corporate seal, and attested by herself as its said County Clerk.

This the 15th day of July, 2008

Elizabeth M. Marum



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

This the ____ day of _____, 2008.

City of Durham Finance Officer

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

This the 9 day of July, 2008.

Vicki McConnell
Chatham County Finance Officer