

STATE OF NORTH CAROLINA
COUNTY OF LEE

WATER PURCHASE CONTRACT
CHATHAM COUNTY

THIS CONTRACT, made and entered into as of the 1st day of July, 2017, (the “effective date”) by and between the CITY OF SANFORD, a North Carolina municipal corporation, hereinafter referred to as “City” and CHATHAM COUNTY, a body corporate and politic and one of the one hundred counties of North Carolina, hereinafter referred to as “County”.

WITNESSETH:

WHEREAS, City operates a water system, and is willing to sell to County water upon the terms and conditions hereafter set forth: and

WHEREAS, County is willing to purchase a minimum amount of water per month and desires to purchase up to an average monthly volume of one and one half million (1,500,000) gallons per day (1.5 mgd) of water from the City, upon the terms and conditions as hereinafter set forth:

NOW, THEREFORE, for and in consideration of the mutual promises herein contained and the sum of Ten Dollars, in hand paid, the receipt of which is hereby acknowledged, the parties have mutually agreed as follows:

1. Provision of water. Beginning January 1, 2018, City agrees to sell to County under this Contract potable water, meeting the applicable purity standards of the North Carolina Division of Health, at the existing connection point between City and County lines, also known as the “delivery point” and the “point of interconnection”, located at the intersection of Deep River and US Hwy 15-501, or at a combination of this connection point or other existing connection points as mutually agreed upon by the parties, 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 City’s control. County may sell the water to any customer located in Chatham County.
2. Term. The initial term of this Contract shall continue in full force and effect for a term of seven (7) years from the effective date, and shall automatically renew for additional five (5) year terms, unless one party provides the other party written notice of termination at least 365 days before the end of the then current term.
3. Location. City shall provide water via a supply line at a connection point located at the intersection of Deep River and US Hwy 15-501 through the existing line currently providing water to County, or a combination of this and other existing connection points as mutually approved upon by the parties.

4. Rate. County shall pay the City for the water it purchases under this Contract at a rate calculated as the City of Sanford wholesale rate – (Utility Basis 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 point of interconnection. After January 1, 2020, the current per 1,000 gallon rate shall be evaluated and updated every two (2) years. City shall provide written notice to County of proposed rate amendment(s) no later than 180 days prior to the beginning of the fiscal year (July 1) for which said rate amendment(s) are proposed to go into effect. The water use charge shall be billed in arrears on a monthly basis. County shall pay the City in full no later than fifteen (15) days after receipt of the bill or the due date noted on the bill, whichever is later. In addition, the County shall pay the City an annual amount of \$164,035 to reserve capacity for the County (the “capacity fee”). The capacity fee shall be billed prospectively in equal quarterly payments of \$41,008.75 beginning January 1, 2018 and due fifteen (15) days after billing.
5. Amount. City shall sell County any amount up to a maximum monthly average of one and one half million (1,500,000) gallons per day (1.5 mgd).
6. Overages. It will be deemed that County has exceeded the maximum monthly average when the meter for County indicates usage over the monthly average of one and one half million (1,500,000) gallons per day (1.5 mgd), without prior approval or negotiation with City. When the maximum is exceeded, County shall pay 125% of the rate for all gallons above the reserved volume of one and one half million (1,500,000) gallons per day (1.5 mgd).
7. Floating re-opener. In the event County desires to increase the maximum monthly average volume of water received from City, County may request the same in writing and renegotiate the terms of this contract as mutually acceptable to both parties. However, the City is under no obligation to increase the maximum monthly average volume of water provided to the City.
8. Minimum bill. City shall bill County for the actual amount of water delivered at the point of connection as shown on the meter at the then applicable rate; provided, however, the City shall bill and County shall pay for a minimum quantity of one-third of the maximum reserved volume, or one-half million (500,000) gallons per day (.5 mgd), calculated as a monthly average.
9. Meter maintenance. City shall operate and maintain, at its expense, all necessary metering equipment at the points of delivery to measure the water delivered to County, and upon the written request of County, the City 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, then City shall adjust its bill 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.

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

a. The failure of County 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 City that County has failed to make timely payments as required by Paragraph 4 of this Contract.

b. Except in Force Majeure situations, the failure of either party to perform any of its obligation under this Agreement (except as noted 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"). 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, however, 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 Contract upon a date specified in such notice, which date shall not be less than fifteen (15) days after the date of delivery or mailing of such notice. On the date specified in the notice this Contract shall terminate as fully and with like effect as if the entire term of this Contract 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 Contract pursuant to this Paragraph 10 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. 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 Contract.

11. Conditions Precedent. County hereby acknowledges the following rights reserved to the City are conditions precedent to the making of this Contract and the sale and delivery of water as provided herein:

- a. County shall furnish and operate, at its own expense, necessary pumps, altitude valves, or other necessary equipment to operate its system, and shall regulate the flow of water into its system at a rate as uniform as possible over a twenty-four (24) hour period, and shall take all reasonable precautions to avoid and prevent public health hazards in its system and will take no action that will create public health hazards in City's system, including cross-connections.
 - b. The parties enter into an Interlocal Agreement for the City to provide the County wastewater treatment services.
12. Regulations. Both City's and County'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 City or County, and their operation of their respective water systems.
13. Prohibition on assignment. County shall not sell, assign or transfer this Contract, or any part thereof, without the express written consent of the City.
14. Amendments. The provisions of this Contract may be amended at any time upon mutual written agreement of the parties.
15. Force Majeure. It shall not be considered a breach of this Contract and City shall not be responsible for an inability to perform or any delays, damages, costs, expenses, liabilities or other consequences that may arise as a result of force majeure. A "force majeure" is defined as any event arising from causes beyond the reasonable control of City, 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 City; provided, however, in order to avail itself of this provision City 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.
16. Severability. If any of the provisions of this Contract is held invalid, illegal, void or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.
17. Limitation of Liability. City shall not be liable for any condition, quality, purity, impurity, or contamination of the water provided to County beyond the connection point, and after it enters into the County system. Each party shall take steps to ensure that the consumer receives potable water, but liability shall be limited and transferred to the County once the water passes from the City water system into the County water system. No party hereto shall be liable under this Contract 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. City shall not be liable for failures of the County water system.

18. No Third Party Beneficiaries. There are no third party beneficiaries to this Contract. This Contract does not and is not intended to confer any rights or remedies upon any person other than the parties.
19. Dispute Resolution. In the event of any dispute between City and County hereunder, the City Manager or his/her designee on the behalf of the City, and the County Manager or her/his designee on behalf of the County, 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 Contract 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 this Contract of any other matter in dispute with regard to the subject matter of this Contract.

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 Contract or any other dispute with regard to the subject matter of this Contract. 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 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 and/or Lee County, North Carolina, or any other state or federal court having jurisdiction, with the same force and effect as any other judgment.

20. Notice. As stated herein, notice shall be given in writing directed to

City of Sanford
City Manager
P. O. Box 3729
Sanford, N.C. 27331

Chatham County
County Manager
P. O. Box 1809
Pittsboro, N.C. 27312

This Notice provision may be updated or supplemented from time to time to utilize current mailing addresses, e-mail or other electronic means of communication by sending said notice of update through the last established means of correspondence at the last established address.

21. Existing Agreements. Existing agreements, if any, between the Parties that are not related to the subject matter of this Water Purchase Contract shall not be altered or affected by this Water Purchase Contract.
22. No Third Party Beneficiaries. There are no Third Party Beneficiaries to this Water Purchase Contract. The provisions of this Water Purchase Contract shall not impart rights enforceable by any person, entity, or organization not a party to this Water Purchase Contract.
23. Miscellaneous. This Contract 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 Contract. This Contract may not be changed orally, but only by a written document signed by both parties. No waiver of any of the provisions of this Contract shall be valid unless in writing and signed by the party against whom it is sought to be enforced. The provisions of this Contract 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 Contract shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina. The headings contained in this Contract are solely for the convenience of the parties and do not constitute a part of this Contract and shall not be used to construe or interpret any provisions hereof. This Contract shall be considered for all purposes as having been prepared by the joint efforts of the parties and shall not be construed against on 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 Contract shall not affect the validity or enforceability of any other provisions of this Contract, 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 Contract 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 Contract by signing any such counterpart.

IN WITNESS WHEREOF, the City of Sanford 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 and Chatham County has cause 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, the date first above written.

City of Sanford

By: _____
T. Chet Mann, Mayor

(seal)

Attest:

Bonnie Davis, City Clerk

Chatham County

By: _____
Jim Crawford,
Chairman Board of Commissioners

(seal)

Attest:

Lindsay Ray, County Clerk