

## INTERLOCAL AGREEMENT

Pursuant to N.C. Gen. Stat. §160A-461, this INTERLOCAL AGREEMENT made and entered into the 1<sup>st</sup> day of July, 2017 (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, Attention: County Manager, Pittsboro, North Carolina 27312 (“Chatham”), and the City of Sanford, a North Carolina municipal corporation located in Lee County, North Carolina, with a mailing address of Post Office Box 3729, Attention: City Manager, Sanford, North Carolina 27331 (“Sanford”). Either Chatham or Sanford may be referred to herein as a “Party” or collectively as the “Parties”.

### WITNESSETH

WHEREAS, the Parties are interested in jointly providing needed infrastructure to the Moncure area of Chatham County (the “Moncure Area”), including a proposed industrial site to be located therein (the “Moncure Megasite, or the “Site”) to aid the owners and developers of the Site in attracting a significant industrial facility to the Site; 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 City of Sanford to enter into an agreement for the purposes noted hereinbelow;

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 attract a significant industrial facility to the Moncure Megasite, the Site will, *inter alia*, need access to an adequate wastewater treatment facility. Additionally, there are other wastewater treatment needs in that general area. Sanford has sufficient capacity in its wastewater treatment facility to reserve and allocate 1,000,000

gallons per day for the Moncure Area and the Moncure Megasite (the "Moncure Allocation") . The Parties have agreed that not less than 250,000 gallons per day (250K GPD) of the Moncure Allocation shall be allocated to Chatham, and Chatham, in its discretion, may designate its 250K GPD of its wastewater capacity allocation for residential, commercial, or industrial customers in the Moncure area. The Parties have agreed to cooperate in investigating the cost to design, permit, and construct the needed infrastructure. Sanford has received a \$4,000,000 grant from the Golden LEAF Foundation ("Golden Leaf") for the construction of such infrastructure with a deadline of thirty (30) months (from the date of award, or as otherwise agreed between the Golden Leaf and Sanford) to complete construction of the needed infrastructure.

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 Sanford and Chatham to jointly fund the cost of the project from preliminary engineering through completion of the construction of the needed wastewater infrastructure as outlined above (the "Project").
  
3. **Contract with Freese and Nichols, Inc.** Sanford has entered into a contract with Freese and Nichols, Inc., for all engineering services needed to provide the infrastructure to transmit wastewater from the Moncure Area and the Site to Sanford's Wastewater Collection System as set forth in the Agreement for Professional Services, dated the 21<sup>st</sup> day of March, 2017, for a fee not to exceed \$1,758,850, a copy of which is attached hereto as Appendix 1, and incorporated herein by reference (the "FNI Contract"). The engineering services to be performed under the FNI Contract are divided into three (3) phases (Phase 1, Phase 2 and Phase 3) , and the Contract provides that no phase shall be undertaken without prior written authorization from Sanford. Sanford has previously authorized FNI to undertake the work under Phase 1 and 2. FNI has

commenced work on those phases. Sanford agrees that it will not authorize FNI to undertake any work on Phase 3 without the express prior written consent of Chatham.

4. **Contract for Construction for Infrastructure.** The Parties shall jointly review all plans and specifications prepared for the Three Phases, including the bid documents (collectively the "Construction Documents") prepared by FNI for the construction of the infrastructure to serve the Moncure Area and the Moncure Megasite including the 250K GPD to be reserved for and allocated to Chatham. Once both Parties have approved the Construction Documents Sanford shall proceed to bid the Project following all applicable statutory bidding requirements. The bids shall be jointly evaluated by the Parties and shall be approved by the designated representative of each Party. The governing body of each Party shall then review and approve the bids for the Project, following which Sanford shall enter into a construction contract (the "Construction Contract") for the Project with the lowest responsible, responsive bidder or bidders (the "Construction Contractor").
  
5. **Joint Administration of the FNI and Construction Contracts.** The Parties shall jointly administer the FNI Contract and the Construction Contract, notwithstanding the fact that Sanford is the contracting party with FNI, and will be the contracting party with the Construction Contractor, and Sanford shall cooperate with Chatham and involve Chatham through its designated representative in all decisions of any consequence, including without limitation change orders and directives with respect to both the FNI Contract and the Construction Contract.

6. **Representatives of the Parties.** The designated representative of each Party and their contact information for contract administration and any consent, notice, information, or other matters hereunder is as follows:

Sanford

Victor I. Czar, P.E.

Public Works Director

P. O. Box 3729

Sanford, NC 27331

919-777-1117

[victor.czar@sanfordnc.net](mailto:victor.czar@sanfordnc.net)

Chatham

Dan J. LaMontagne, P.E.

Chatham County Assistant County Manager

P. O. Box 1809

Pittsboro, NC 27312

919.545.8531

[Dan.LaMontagne@Chathamnc.org](mailto:Dan.LaMontagne@Chathamnc.org)

Either Party may change its designated representative or the contact information for its representative by giving the other Party written notice of such change, which change shall be effective upon receipt by the other Party.

7. **Additional Service for Moncure Customers.** In addition to the capacity for the proposed industrial facility to be located at the Moncure Megasite, Sanford shall cause FNI to design the infrastructure with sufficient capacity, as hereinafter provided, to serve existing and future businesses and residences in the Moncure Area, which existing and future businesses and residences shall be designated by Chatham and have the right to connect to the infrastructure (with tap or other connection fees that do not exceed those charged to similarly situated customers inside the corporate limits of Sanford) and have their wastewater treated by Sanford at rates and fees that do not exceed those charged to similarly situated customers outside of the corporate limits of Sanford, but within Sanford's extended service district. Sanford agrees to reserve and allocate to Chatham not less than 250K GPD of the infrastructure capacity for the residential, commercial, and industrial customers designated by Chatham.

8. **Project Cost.** All expenditures from preliminary design through completion of construction of the Project to provide the necessary wastewater collection infrastructure to serve the Moncure Area and the Moncure Megasite along with the Chatham allocation described above, including, but not limited to, design, easement acquisition, construction, and other related costs and other related expenditures shall be the Project Cost. The current estimated Project Cost is \$10,919,500±. Sanford has a Golden Leaf Grant of \$4,000,000, the use of which is restricted for the Project which it shall use to defray a portion of the Project Cost. The Parties agree to contribute equally to the remaining Project Cost which at this time is estimated to be \$3,459,750 per Party. Sanford shall invoice Chatham for Chatham's share of each invoice received with respect to the foregoing, and shall include a copy of the most recent invoice for which it is seeking payment, and payment shall be due from Chatham to Sanford within fifteen (15) days of receipt of Sanford's invoice. In the event of any cost overruns, each party will be allowed to decide whether to proceed with the Agreement or not.
9. **Treatment of Wastewater.** Following completion of construction of the Project Sanford shall be solely responsible for transmitting the wastewater through the infrastructure and to and through its wastewater treatment facility to a final discharge within the receiving river or stream, with treated effluent meeting all State and Federal regulatory requirements. However, Sanford shall not be responsible for the construction or maintenance of any private lift stations that may be added to the Project infrastructure.

10. **Reporting.** Chatham agrees to collect and report to Sanford, all employment data and private investment, necessary to fulfill the Golden Leaf grant requirements for development that takes place in Chatham County.
11. **Easement Acquisition.** Chatham will allow Sanford to acquire any interests in land necessary to allow for installation of the infrastructure contemplated above, by any means available to them including condemnation. Although the Parties desire that Sanford's acquisition of any necessary easements is by voluntary purchase, it may be necessary for Sanford to utilize its powers of eminent domain not only within Lee County, but also within Chatham County. To the extent it becomes necessary or expedient for Sanford to acquire property within Chatham County, the Chatham County Board of Commissioners hereby irrevocably authorizes Sanford, in Sanford's discretion, to utilize its powers of eminent domain within Chatham County as provided for in N.C. Gen. Stat. §153A-15.
12. **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.
13. **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.
14. **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.

15. **Water Contract.** It is a condition of this INTERLOCAL AGREEMENT that the Parties enter into a separate water purchase contract as attached hereto and incorporated herein by reference as Appendix 2.
16. **Term.** This INTERLOCAL AGREEMENT shall run for a term equal to the time the Moncure Megasite is being marketed as an industrial site, but in no case less than five years from its effective date. Upon completion of term, the INTERLOCAL AGREEMENT may be modified or extended provided, however, notwithstanding any modification or termination hereof, Sanford's obligation herein to reserve and allocate not less than the 250K GPD to Chatham shall continue for a term of thirty (30) years from the effective date of the INTERLOCAL AGREEMENT.
17. **Dispute Resolution.** In the event of any dispute between Chatham and Sanford hereunder, the City Manager or his or her designee on the behalf of Sanford 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.

18. **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 City of Sanford 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*  
Vicki McConnell  
Finance Director  
Chatham County

**CHATHAM COUNTY**

By: *Renee Paschal*  
Name: Renee Paschal  
Title: County Manager

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

*Beth Kelly*  
Beth Kelly  
Finance Director  
City of Sanford

**CITY OF SANFORD**

By: *T. Chet Mann*  
Name: *T. Chet Mann*  
Title: *MAYOR*