



Pittsboro-Sanford Draft Wastewater Treatment Contract

9/26/16

Purpose:

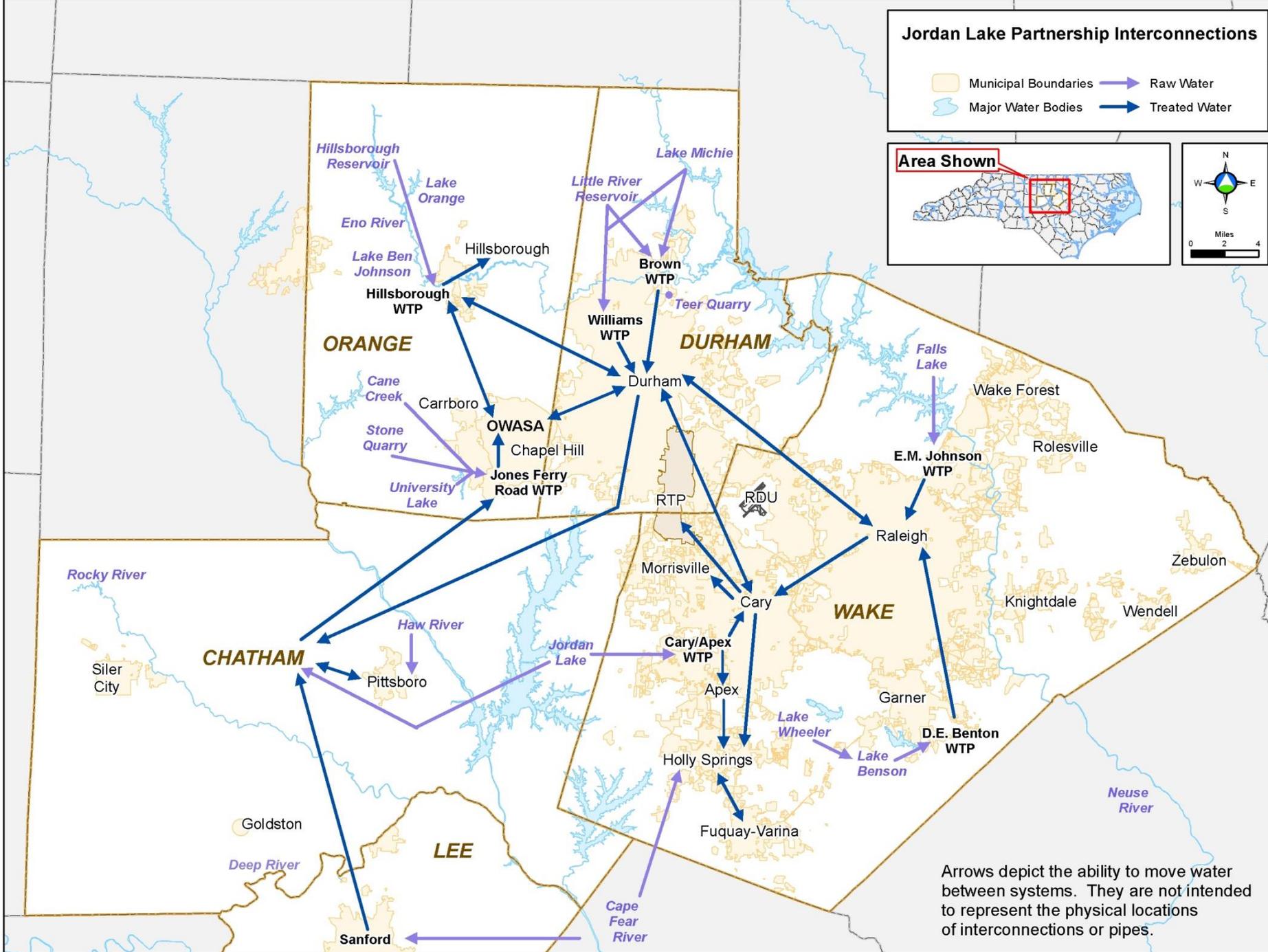
Revisit what has been discussed with Sanford Staff re draft force main language

Overview of basic terms and rates.

Jordan Lake Partnership Interconnections

- Municipal Boundaries
- Major Water Bodies
- Raw Water
- Treated Water

Area Shown



Arrows depict the ability to move water between systems. They are not intended to represent the physical locations of interconnections or pipes.



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WITNESSETH:

WHEREAS, Pittsboro owns and operates a wastewater collection and treatment system with limited excess treatment capacity and is seeking solutions to its current and future wastewater needs; and

WHEREAS, Sanford owns and operates a wastewater treatment system with excess capacity capable of treating Pittsboro's wastewater as proposed; and

WHEREAS, Pittsboro is in need of additional treatment capacity for its collected wastewater; and

WHEREAS, Sanford has agreed to treat and dispose of said collected wastewater upon the terms and conditions as hereinafter set forth; and

WHEREAS, the parties have agreed as hereinafter set forth and wish to execute this agreement to memorialize their understanding;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, the parties hereto agree as follows:



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NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

- I. Sanford agrees to accept up to a monthly average of 2,000,000 gallons per day (2.0 MGD) of Pittsboro's wastewater meeting the applicable standards of Sanford's Sewer Use Ordinance at a specified point of delivery on Sanford's wastewater system in Lee County, North Carolina.

- II. Pittsboro agrees to pay for treatment of all wastewater delivered to Sanford at the specified point of delivery pursuant to this Contract in accordance with the applicable charge as set forth herein. Additionally, Pittsboro shall pay a charge for their share of the reserved capacity of Sanford's Water Reclamation Facility in accordance with this contract.



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III. Both parties agree as follows:

A. Term. The initial term of this Contract shall be 30 years from the date of execution, with automatic 10 year renewals, perpetually, unless terminated as provided herein, so long as the City of Sanford is willing and able to provide wastewater treatment service to the Town of Pittsboro. In the event the parties hereto agree to terminate the contract, notice shall be given in writing at least 18 months in advance of the intention to terminate, even if at the end of a term. Both parties agree that the provision of wastewater treatment is vital to Pittsboro and the significant usage is vital to Sanford, thus, termination will not be entered into lightly and both parties agree to make every effort to promptly notify the other of its intent regarding this service.



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- B. Exclusivity. To induce Sanford to treat its waste, Pittsboro agrees that Pittsboro shall collect and transport to Sanford any and all wastewater generated within its corporate limits. In the event Pittsboro's collection system extends beyond the corporate limits, Pittsboro agrees that any and all wastewater collected beyond its current corporate limits shall be transported to Sanford for treatment. While there is no minimum flow required, Sanford shall receive all flow from Pittsboro, so long as it is willing and able to provide treatment. Pittsboro may hold waste at its' current plant or in tanks to regulate the flow to Sanford to adjust flow within the average daily limit. Furthermore, there shall be no other treatment of Pittsboro's waste beyond the 250,000 gallon per day plant proposed by Chatham Park for reuse purposes only.



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- C. Point of Delivery. The wastewater will be delivered through a _____ inch (___") force main transmission line running along US Highway 15-501 from Pittsboro to the Sanford wastewater system at a mutually agreed upon point. Pittsboro shall own, operate and maintain the force main, lift station and appurtenances to the Point of Delivery. Pittsboro is responsible for all easements, encroachments and permits necessary and for construction, maintenance and operation of the facility up to the mutually agreed upon point of delivery.



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D. Pretreatment Program.

- (1) Pittsboro shall establish and conduct an industrial Pre-treatment program in accordance with Sanford's rules and regulations, so that waste received from Pittsboro meets the standards set in Sanford's ordinance. Pittsboro shall adopt necessary ordinances, policies and programs to operate the compatible pre-treatment program.
- (2) Pittsboro shall collect and supply Sanford with all necessary information for prior approval by Sanford of all pre-treatment permits and to verify compliance.
- (3) Prior to Pittsboro issuing any permits, Pittsboro shall submit application information to Sanford for review and approval and shall not issue any permits without Sanford's prior approval.
- (4) Pittsboro shall use any and all means necessary to enforce compliance with the pre-treatment program, and Sanford shall have the authority to immediately terminate service and this agreement with no prior notice, if Pittsboro fails to do so.
- (5) Based on the information provided, Sanford shall bill Pittsboro on a monthly basis for any applicable surcharges at Sanford's prevailing rates. Pittsboro agrees to assess and collect all surcharges from its customers or otherwise to pay said charges, regardless of whether the customer pays.
- (6) Sanford shall have the right to audit at any time upon written notification and Pittsboro shall supply all information necessary for the audit.



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E. Exceeding Reserved Capacity. To incentivize additional reservation of capacity or reduction in flow, if a monthly average amount received exceeds the reserved capacity (2 million gallon per day) for two consecutive months within a 12 month period, the third month and any additional month's overage in a 12 month period shall result in a premium charge 50% greater than the established charge for treatment. If the daily average exceeds the reserved capacity (2 mgd) in one month by more than double the reserved capacity, then the overage will be charged at a premium 50% greater than the treatment charge. If either condition is met, Pittsboro shall provide, upon request by Sanford, a plan for addressing the overage, payment of additional capacity charges, reservation of additional capacity and renegotiation of capacity charge, or Termination of the Agreement.



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Improvements or Future Capacity.

- (1) Improvements and upgrades required and/or necessary for the efficient and cost effective operation of the Sanford Water Reclamation Facility applicable to the treatment of each gallon processed at the Facility shall be charged as an additional fee beyond the capacity charge.
- (2) If Sanford decides to make an improvement to the Water Reclamation Facility which is not necessary or required, Pittsboro has the option to participate in the cost.
- (3) If Pittsboro requests Sanford to make an improvement to the Facility that is not necessary or required, then Sanford will evaluate and decide whether to make the improvement and whether to participate in a portion of the cost. Sanford reserves the right to decline to make said requested improvement. If Pittsboro requests an improvement that Sanford allows, but declines to participate in, any associated expenses shall be paid by Pittsboro upon terms negotiated prior to the improvement.



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G. Maintenance. At its own expense, Pittsboro shall maintain, improve and expand its wastewater collection system in a responsible, cost- efficient and proactive manner, addressing and correcting sources of inflow and infiltration, cross-connection, blockages, breaks and impediments to flow so the wastewater system operates properly.



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H. Charges. For sewer service, Pittsboro shall pay Sanford a Treatment Charge as shown on Exhibit A and a Capacity Charge as shown on Exhibit B. The Treatment Charge shall be recalculated annually. To determine the Treatment Charge using prior year actuals, Sanford will notify Pittsboro by November 1, or as soon thereafter as possible, of the updated Charge to be effective January 1 through December 31 of the following calendar year. Upon request by Pittsboro, Sanford will provide a projection of the charges, to assist with budgeting or otherwise.



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o Option 1: Charge would be based on the prior year audited actual expenses as certified in our CAFR (Comprehensive Annual Financial Report). This methodology could result in the rate fluctuating from year to year depending on the actual expenses incurred by the City of Sanford.

	FY 2014 Audited Actuals	FY 2015 Audited Actuals	FY 2016 Unaudited Actuals
Cost per 1,000 Gallons	1.13	1.18	1.02

Option 2: Fixed rate of \$1.40 per 1,000 gallons for 5 years. Sanford is willing to reissue a rate every 5 years.

Capacity Charge: Based on the prorated share of debt remaining on the Sanford Facility at the time of Contract approval. Pittsboro could repay the amount over a 25 year period Plus 3.51% interest.



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I. Meter. Treatment Charges for services furnished under this Contract by Sanford shall be based upon the volume of wastewater measured at the Meter. At a location approved by Sanford, Pittsboro agrees to furnish and install, at the expense of Pittsboro, the necessary metering equipment and required devices, as approved by Sanford, for properly measuring the quantity of wastewater delivered to Sanford. Pittsboro shall calibrate the metering equipment at least once every three years. Sanford may request it to be calibrated more often. If requested more than once every three years, Pittsboro shall test the metering equipment to see if it registers 3% above or below the test flow. If so, Pittsboro shall pay for the test and shall calibrate the equipment. If the test reveals that the meter is registering accurately (within 3% above or below) Sanford shall pay for the testing. If Pittsboro initiates a test, Pittsboro shall inform Sanford prior to testing and pay for the test, inform Sanford of the results and if needed, calibrate the equipment.

J. Meter Readings. At their expense, Pittsboro agrees to transmit meter readings to Sanford via automatic meter reading technology compatible with Sanford's meter reading and billing capabilities. Metering shall be done such that a report of the daily volumes can be provided to Sanford, along with a log of pump run times, recording charts, calibrations and adjustments, which shall be provided upon request. Sanford, at all reasonable times, shall have access to the meter for the purpose of verifying its readings..

K. Meter Failure. If any meter fails to register for a period of fourteen (14) days or less, the amount of wastewater furnished during such a period shall be deemed to be the amount of wastewater delivered in the corresponding period immediately prior to the failure. If the wastewater meter fails to register for a period greater than 14 calendar days, the amount of wastewater furnished after the initial 14-day period shall be billed an amount for a volume equal to the rated capacity of the wastewater pump(s), multiplied by the total time pumped. If the replacement of the meter is deemed necessary by the Engineer of the City of Sanford, the replacement shall be arranged by Pittsboro and cost of replacement paid by Pittsboro.



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- L. Failure of Service: Sanford will, at all times, so long as it is willing able and to the best of its ability, operate and maintain its system in an efficient manner and will furnish Pittsboro with the maximum capabilities as stated herein. Temporary or partial failures to receive wastewater shall be remedied with all possible dispatch but shall not constitute a breach so long as such remedy is diligently being pursued.
- M. Force Majeure: It shall not be considered a breach of this contract and Sanford 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 Sanford, 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 Sanford.
- N. It shall not be considered a breach of this contract and Pittsboro 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 Pittsboro, 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 Pittsboro.
- O. Regulatory Agencies: This Contract shall be subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United State of America and the State of North Carolina. The parties agree that this Contract is subject to such rules, regulations, or laws as may be applicable to similar agreement in this State, and Sanford and Pittsboro will collaborate in obtaining such permits, certifications, or the like, as may be required to comply therewith.



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- O. Compliance: Pittsboro shall comply with any terms or conditions of Sanford Sewer Use Ordinance related to the wastewater delivered to Sanford.

- P. Right of Access: Sanford shall have the right to collect and analyze wastewater samples from within Pittsboro's collection system to determine compliance with Sanford's Sewer Use Ordinance and to determine sources of non-compliance.

- Q. No Assignment: No party may assign any of its rights under this Contract, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. . Any purported assignment of rights in violation of this Section Q is void.



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- R. Indemnity and Limits of Liability: In the event wastewater that does not conform to the applicable standards of the Sanford Sewer Use Ordinance and which causes upset at the Wastewater Treatment Plant or causes Sanford to exceed its discharge permit parameters, which is attributable to Pittsboro, Pittsboro shall indemnify Sanford and pay any penalty, costs or expenses that Sanford incurs. Sanford shall not be liable for any failure of the wastewater collection system of Pittsboro. Pittsboro shall not be liable for any failure of the wastewater treatment system of Sanford. Sanford shall indemnify Pittsboro and pay any penalty, costs or expenses of Pittsboro in the event that Sanford violates this Agreement or does not comply with applicable permits, laws and regulations. Pittsboro shall pay for any penalties or expenses incurred in discharges prior to receipt at Sanford's Water reclamation Facility. Pittsboro shall pay any penalty, costs or expenses of Sanford in the event Pittsboro violates this Agreement or does not comply with applicable permits, laws and regulations.



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- S. Sanford Requirements: Sanford shall operate, maintain, repair, upgrade, improve, maintain and replace its wastewater treatment system so that the same operates as intended, in an economical manner, in compliance with current industry practice and all legal requirements as determined by Sanford, in its sole discretion.



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- T. Final Agreement; Amendment: This Contract constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Contract. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Contract are expressly merged into and superseded by this Contract. The provisions of this Contract may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Contract, neither party has relied upon any statement, representation, warranty or agreement of the other party except for those expressly contained in this Contract. There are no conditions precedent to the effectiveness of this Contract, other than those expressly stated in this Contract. The provisions of this Contract may be amended at any time upon mutual written agreement of the parties.



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U. 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.

V. Notices: All notices required pursuant to this Contract shall be given in writing, to the following and use one of the following methods of delivery, each of which for purposes of this Contract is a writing: personal delivery, Registered or Certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid):

Town of Pittsboro	City of Sanford
Mayor	Mayor
Manager	Manager
Public Works Director	Public Works Director
P. O. Box 759	P.O. Box 3729
Pittsboro, N.C. 27312	Sanford, N.C. 27331



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- W. Municipal Approvals: Each municipality shall cause this Contract to be approved by its governing board.
- X. Waiver: The parties may waive any provision in this Contract only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay (i) in exercising any right or remedy, or (ii) in requiring the satisfaction of any condition, under this Contract, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.



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- Y. Counterparts: The parties may execute this Contract in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Contract in the presence of the other parties to this Contract. This Contract is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Contract, a party must produce or account only for the executed counterpart of the party to be charged.

- Z. Further Assurances: Each party and its officials and employees shall use all commercially reasonable efforts to take, or cause to be taken, all actions necessary or desirable to consummate and make effective the transactions this Contract contemplates. Each party and its officials and employees shall use all commercially reasonable efforts to take, or cause to be taken, all further actions necessary or desirable to carry out the purposes of this Contract.



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Next Steps:

Sanford City Council Reviews

Utilities Workshop October 13, 2016

Additional conversations with Sanford

Davenport Financial Overview: October 24, 2016