

WASTEWATER TREATMENT AND CAPACITY RESERVATION CONTRACT
BETWEEN
THE CITY OF SANFORD, NORTH CAROLINA
AND
THE TOWN OF PITTSBORO, NORTH CAROLINA

THIS CONTRACT made and entered into on the _____ day of _____, 2017, by and between the City of Sanford, a North Carolina municipal corporation located in Lee County, North Carolina, hereinafter referred to as "Sanford," and the Town of Pittsboro, a North Carolina municipal corporation located in Chatham County, North Carolina, hereinafter referred to as "Pittsboro."

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

WHEREAS, Sanford has agreed to reserve treatment capacity in its Water Reclamation Facility for Pittsboro upon the terms and conditions 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:

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. Sanford further agrees to reserve 2.0 MGD of wastewater treatment capacity in its Water Reclamation Facility for Pittsboro.

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 charges as set forth herein. Additionally, Pittsboro shall pay a charge for the reserved wastewater treatment capacity in Sanford's Water Reclamation Facility in accordance with this Contract. Pittsboro further agrees and commits to deliver to Sanford all of its wastewater, saving and excepting any flow up to 0.5 MGD delivered to the Pittsboro-Chatham Park Reclamation facility, up to the 2.0 MGD of capacity reserved herein.

III. Both parties agree as follows:

A. Term. Unless sooner terminated by mutual agreement or as set forth herein, the term of this Agreement shall be 30 years from the Effective Date of this Agreement. This Agreement may be renewed for two (2) additional thirty (30) year terms. 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.

B. Design, Permitting, Construction of Facilities and Point of Delivery. Pittsboro, at its expense and at no cost to Sanford, will design, permit, and construct a force main transmission line running along US Highway 15-501 from Pittsboro to the Sanford wastewater system, a lift station, and a collection system with adequate grit removal and odor control (collectively, the "Interconnection Infrastructure"), as shown on Exhibit A attached hereto and incorporated herein. Pittsboro shall secure all easements, encroachments and permits necessary for the construction, maintenance and operation of the Interconnection Infrastructure. The Interconnection Infrastructure shall be designed to meet a variety of flows, hydraulic conditions, and other factors and sized to perform properly under initial and future flow conditions. Sanford shall review and approve Pittsboro's connection to Sanford's facility at a mutually agreed upon Point of Delivery, which approval shall not be unreasonably withheld. Pittsboro shall own, operate, and maintain the Interconnection Infrastructure to the Point of Delivery.

C. Pretreatment Program.

(1) Pittsboro shall establish and conduct an industrial pre-treatment program in accordance with Sanford's rules and regulations, to ensure that wastewater received from Pittsboro meets the standards set in Sanford's Sewer Use Ordinance. Pittsboro shall adopt necessary ordinances, policies and programs to operate a consistent pre-treatment program.

(2) Pittsboro shall collect and supply Sanford with all necessary information for prior approval by Sanford of all required pre-treatment permits and thereafter to verify compliance by industrial permit holders.

(3) Prior to Pittsboro issuing any pre-treatment permits, it shall submit application information to Sanford for review and approval and shall not issue any pre-treatment permits without Sanford's prior approval.

(4) Pittsboro shall use any and all means necessary to enforce compliance with the applicable standards of the industrial wastewater pre-treatment program, and Sanford shall have the authority to immediately terminate the service contemplated under this Contract 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 Pittsboro's pre-treatment program at any time upon written notification and Pittsboro shall supply all information necessary for the audit.

D. Exceeding Reserved Capacity. Pittsboro agrees that it will not transmit wastewater to Sanford on an average monthly/daily flow basis in excess of its wastewater treatment capacity reserved in this agreement. To incentivize additional reservation of capacity or reduction in flow, if the monthly average flow received by Sanford from Pittsboro exceeds the reserved capacity of 2.0 MGD for two consecutive months the third month and any additional month's overage within the following 12-month period shall result in an "excess treatment charge" of 125% of the established charge for treatment. If the daily average flow received by Sanford exceeds the reserved capacity of 2.0 MGD in any month by more than 2.0 MGD, then the additional flow in excess of 2.0 MGD will be charged at an excess treatment charge of 125% of the established charge for treatment. If either condition occurs during the term of this Contract, Pittsboro shall pay the additional excess treatment charges upon billing by Sanford. In addition, Pittsboro shall, if requested by Sanford, provide a plan for addressing the excess flow which may include reducing the flow, reservation of additional capacity and renegotiation of capacity charge.

In the event Sanford provides to Pittsboro reuse water pursuant to a separate agreement, Pittsboro may deliver an equal amount of wastewater to Sanford with no additional Capacity Charge. Furthermore, the excess treatment charges listed above shall apply only to the excess flows which exceed the total of the reserved capacity plus the reuse water volume provided to Pittsboro.

E. 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 shared by Sanford and Pittsboro. Pittsboro's share of the cost thereof shall be in the same proportion as its share of the total treatment capacity of the Sanford facility. That share shall be an additional Capacity Charge paid in installments over a term of not more than 25 years.

(2) If Sanford decides to make elective improvements to the Water Reclamation Facility which are 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.

(4) 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.

F. Charges.

(1) For receiving, treating, and disposing of Pittsboro's wastewater Sanford shall, on a monthly basis, charge according to [Sanford's utility customer policies](#), and Pittsboro shall pay a "Wastewater Treatment Charge" determined in accordance with Exhibit B. The Treatment Charge shall be calculated 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 Treatment Charge to be effective July 1 through June 30 of the following municipal fiscal year. Upon request by Pittsboro, Sanford will provide a projection of the charges, to assist with budgeting or otherwise.

(2) For the reservation of 2.0 MGD of wastewater treatment capacity in the Water Reclamation Facility Pittsboro shall pay to Sanford a "Capacity Charge" determined in accordance with Exhibit C.

G. Meter. Charges for all treatment services furnished under this Contract by Sanford shall be based upon the volume of wastewater delivered at the Meter. At the Point of Delivery, or some other location approved by Sanford, Pittsboro shall furnish and install, at the expense of Pittsboro, the necessary metering equipment and required devices, as approved by Sanford, (the "Meter") 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. Charges for all treatment services furnished under this Contract by Sanford shall be based upon the volume of wastewater delivered at the Meter. In the event of any discrepancy resulting from an inaccurate meter, the charges shall be adjusted equitably.

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

I. Meter Failure. If the Meter fails to register for a period of fourteen (14) or fewer days, 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 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 Sanford, Pittsboro shall replace the Meter at its expense.

J. Failure of Service. Sanford shall operate and maintain its wastewater treatment system in an efficient manner consistent with law and regulation 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.

K. 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. It shall not be considered an event of Default hereunder 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. It shall not be considered an event of Default hereunder 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.

L. Governmental Authorities. The parties agree that this Contract is subject to applicable federal and North Carolina rules, regulations, or laws and Sanford and Pittsboro will cooperate, to the extent necessary and appropriate, in obtaining any necessary permits, certifications, or the like and in compliance with the same.

M. Compliance. Pittsboro shall comply with any terms or conditions of the Sanford Sewer Use Ordinance with respect to any wastewater delivered to Sanford.

N. Right of Access. In the event Sanford becomes aware of actual or reasonably suspected non-compliance by Pittsboro with the terms and conditions of the Sewer Use Ordinance, upon prior notice by telephone, facsimile, or electronic mail to Pittsboro, and subject to Pittsboro’s oversight, Sanford has the right to collect and analyze wastewater samples from within Pittsboro’s wastewater collection system to determine compliance with the Sewer Use Ordinance and to determine sources of non-compliance.

O. Default.

(1) Either party to this Contract, in the event of or act of default by the other, shall have all remedies available to it under the laws of the State of North Carolina, including, but not limited to, equitable and extraordinary remedies, such as injunction, mandamus to compel performance of ministerial duty and specific performance to enforce this agreement, subject to state law. The rights of the parties shall be considered cumulative and shall not be waived now or in the future by the exercise of any rights, and remedies provided under the terms of this agreement and authorized by law.

(2) In the event of default by Sanford, either to provide acceptable wastewater treatment service, or to secure and reserve wastewater treatment capacity as contemplated in this Contract such non-performance will not cause or justify cessation of wastewater treatment service for Pittsboro in any manner different from any other Sanford customer. Pittsboro shall be entitled to any and all remedies available to other customers of Sanford's wastewater system.

(3) In the event of an event of default by Pittsboro, Sanford agrees that it will not discontinue wastewater treatment service to Pittsboro provided all payments for service required hereunder are made by Pittsboro and until such time as a court of competent jurisdiction has rendered an adjudication of default. In the event Pittsboro disputes amounts payable for service pursuant to this Agreement, Pittsboro shall continue to make such payments, but may make such payments under protest.

(4) Each of the parties hereto shall give the other party written notice of any default hereunder and shall allow the defaulting party a reasonable period of time from the date of receipt to cure such default.

P. Dispute Resolution. Any dispute regarding the application or enforcement of this Contract will be first communicated to the respective City and Town Managers. These individuals shall meet in an attempt to resolve any dispute prior to any further enforcement action.

Q. No Assignment. No party may assign any of its rights under this Contract except with the prior written consent of the other party which shall not be unreasonably withheld. Any purported assignment of rights in violation of this Section is void. Notwithstanding the above and any other provision herein, upon ten (10) days' prior written notice to Sanford, Pittsboro may, with the prior written consent of Sanford, assign its rights and interests under this Contract for the limited purpose of granting a security interest in such rights and interests in one or more installment financings; provided, however, that such assignment shall not relieve Pittsboro of its obligations under this Contract. Pittsboro's notice shall be accompanied by the form of the proposed security agreement related to such installment financing, and disclose the identity of the secured party thereunder. Sanford agrees that without Sanford's consent, and upon default by Pittsboro in connection with such installment financings, such secured party shall assume, or cause its designee to assume, all of the interests, rights and obligations of Pittsboro arising under this Contract from and after the date of such assumption, provided that such assumption shall not release Pittsboro from its obligations under this Contract.

R. Indemnity and Limits of Liability. In the event wastewater delivered by Pittsboro does not conform to the applicable standards of the Sanford Sewer Use Ordinance and which causes upset at Sanford's Water Reclamation Facility or causes Sanford to exceed its discharge permit parameters, which is attributable to Pittsboro, Pittsboro shall indemnify Sanford and pay any penalty, actual costs or actual expenses that Sanford incurs. Pittsboro shall pay for any penalties or expenses incurred for wastewater discharges prior to receipt at the Point of Delivery. Sanford shall not be liable for any failure of the wastewater collection system of Pittsboro and Pittsboro shall not be liable for any failure of the wastewater treatment system of Sanford.

Sanford shall indemnify Pittsboro and pay any penalty, reasonable costs or reasonable expenses of Pittsboro in the event Sanford violates this Contract or does not comply with applicable permits, laws and regulations. Pittsboro shall indemnify Sanford and pay any penalty, reasonable costs or reasonable expenses of Sanford in the event Pittsboro violates this Contract or does not comply with applicable permits, laws and regulations.

Each party hereto agrees to indemnify and hold the other harmless, to the extent allowed, from the negligent acts of itself, its officers, agents, and employees.

S. Bond Covenants. If it is discovered that any provision of this Contract is inconsistent with bond covenants, the parties agree that they will work to resolve any inconsistencies or terminate this Contract. Each party agrees to disclose this Contract in any future bond issue if material to the issue.

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 is 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.

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. Except as otherwise provided herein, 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, Certified Mail (return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid):

Town of Pittsboro
Mayor
Manager
P. O. Box 759
Pittsboro, N.C. 27312

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

W. Municipal Approvals. Each municipality shall cause this Contract to be approved by its governing board and shall secure any and all necessary municipal reviews and approvals.

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.

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. No Third Party Beneficiaries. This Contract does not and is not intended to confer any rights or remedies upon any person other than the signatories.

AA. 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.

BB. Conditions Precedent. The parties' obligations to perform under this Contract shall be subject to the occurrence (the "Effective Date") of the following first and second or third conditions precedent:

(1) Approval of the Town's Clean Water Revolving Fund Loan CS370413-06 by the North Carolina Local Government Commission; and

(2) Closing of the Clean Water Revolving Fund Loan CS370413-06 by the Division of Water Infrastructure and the State Water Infrastructure Authority upon terms acceptable to Pittsboro providing sufficient funds to design and construct the improvements necessary to deliver wastewater to the City of Sanford for treatment; or

(3) Closing of alternative financing upon terms acceptable to Pittsboro providing sufficient funds to design and construct the improvements necessary to deliver wastewater to the City of Sanford for treatment.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in duplicate counterparts, each of which shall constitute an original.

CITY OF SANFORD

TOWN OF PITTSBORO

Mayor

Mayor

ATTEST:

ATTEST:

(SEAL)

(SEAL)

STATE OF NORTH CAROLINA

COUNTY OF LEE

I, _____, a Notary Public of the County and State aforesaid, certify that Bonnie Davis personally came before me this day and acknowledged that she is the City Clerk of the City of Sanford and that by authority duly given and as the act of the City Council, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by her as its City Clerk.

Witness my hand and stamp and seal, this _____ day of _____, 2016.

Notary Public

My Commission expires: _____

STATE OF NORTH CAROLINA

COUNTY OF CHATHAM

I, _____, a Notary Public of the County and State aforesaid, certify that Alice F. Lloyd personally came before me this day and acknowledged that she is the Town Clerk of the Town of Pittsboro and that by authority duly given and as the act of the Town Council, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and stamp and seal, this _____ day of _____, 2016.

Notary Public

My Commission expires: _____

EXHIBIT A
POINT OF DELIVERY.

EXHIBIT B

WASTEWATER TREATMENT CHARGES

Calculation of the Annual Treatment Charge:

1. Sanford will use its certified financial audit to determine the net total operating cost (“TC”) of for each fiscal year as follows.

2. The net total operating cost (“TC”) will be determined by taking the total operating expenses of the Water Reclamation Facility less any expenses associated with operating the pretreatment program (except those applicable to Pittsboro) along with any non-treatment related capital expenses (i.e. vehicle replacement expenses.)

TC = total operating expenses – [pretreatment costs (except those applicable to Pittsboro)
+ non-treatment related capital expenses]

3. The net total operating cost (“TC”) as determined above shall be divided by the wastewater flow (“TF”) treated at the Sanford Water Reclamation Facility for the previous year to determine a Wastewater Treatment Charge Unit Cost per gallon of wastewater treated (“UC”).

4. ANNUAL WASTEWATER TREATMENT CHARGE UNIT COST CALCULATION:

$$\text{Unit Cost (UC)} = (\text{TC}) \div (\text{TF})$$

EXHIBIT C

WASTEWATER CAPACITY CHARGE

For the reservation of 2.0 MGD of wastewater treatment capacity during the term of this Agreement or any renewal hereof, Pittsboro shall pay to Sanford a Capacity Charge to partially reimburse Sanford for certain capital improvements to the 12.0 MGD current capacity of the Sanford Water Reclamation Facility constructed prior to the Effective Date of this Agreement. Pittsboro agrees to pay a proportionate share of said costs calculated at 2/12ths or 16.67% of the remaining principal balance of Sanford's long term bond indebtedness for the Sanford Water Reclamation Facility as of the earlier of the following:

- (1) Closing of the Clean Water Revolving Fund Loan CS370413-06 by the Division of Water Infrastructure and the State Water Infrastructure Authority upon terms acceptable to Pittsboro providing sufficient funds to design and construct the improvements necessary to deliver wastewater to the City of Sanford for treatment;
- (2) Closing of alternative financing upon terms acceptable to Pittsboro providing sufficient funds to design and construct the improvements necessary to deliver wastewater to the City of Sanford for treatment.
- (3) _____, 201_.

The said principal balance shall be amortized over a term of not more than 25 years at 3.51% interest per annum payable as follows:

- a) As a minimum, in annual installments beginning on the first anniversary of the connection of the Pittsboro force main to the Sanford Water Reclamation Facility pursuant to a payment schedule determined by the parties on the effective date hereof. All payments received shall be applied first in payment of accrued interest and any remainder in payment of principal;
- b) The Capacity Charge may be prepaid in whole or in part at any time by Pittsboro. Partial prepayments shall be applied to the annual installments due hereunder. Pittsboro shall pay any remaining balance due upon the annual installment after crediting the interim partial payments paid to Sanford, if the total is less than the annual installment due. If the partial prepayments within a twelve month period exceed the annual installment due, the excess shall be applied to the unpaid principal balance.
- c) Upon payment of the wastewater Capacity Charge Pittsboro shall have the right to assign the capacity allocated and reserved thereby with the consent of Sanford. Pittsboro shall not profit from such assignment.