

**AN INTERLOCAL AGREEMENT TO MERGE THE WATER, RECLAIMED WATER,
AND SEWER SYSTEMS OF THE TOWN OF PITTSBORO AND THE CITY OF
SANFORD**

THIS INTERLOCAL AGREEMENT (hereinafter the “Agreement”) is dated _____, 2023, (“Effective Date”) and entered into by the CITY OF SANFORD, a municipal corporation of the State of North Carolina (hereinafter the “City” or “Sanford”) and the TOWN OF PITTSBORO, a municipal corporation of the State of North Carolina (hereinafter the “Town” or “Pittsboro”) (and collectively, the “Parties”).

WITNESSETH:

WHEREAS, Sanford owns, operates, and maintains water, reclaimed water, and sewer (also referred to herein as “wastewater”) utility systems within and outside its corporate limits (“City Utility System”); and

WHEREAS, Pittsboro owns, operates, and maintains water, reclaimed water, and sewer utility systems within and outside its corporate limits (“Town Utility System”); and

WHEREAS, Pittsboro expects to have significant residential and commercial development over the next several decades, and that development will require significant capital improvements to the Town Utility System in order to provide water, reclaimed water, and sewer services (“Utility Services”) to its current and future Utility Services customers; and

WHEREAS, the Parties agree that a merger of Town Utility System and City Utility System is the most efficient and cost-effective way to provide Utility Services to the Town’s current and future Utility Services customers, provide economies of scale with a larger system to the Town’s and City’s Utility Services customers, and enhance the ability of the merged systems to provide economic development assistance to the region; and

WHEREAS, a merger of the Utility Systems will give access to increased capital for the Town Utility System improvement needs; and

WHEREAS, the Parties intend to structure the merger so that it will allow increased access to capital for system improvement needs without, however, increasing the rate burden on the existing citizens and customers of the City Utility System; and

WHEREAS, Sanford is willing to assume full responsibility for the provision of Utility Services in and around Pittsboro, including responsibility for Pittsboro’s current and future Utility Services, related equipment, and property rights, and

WHEREAS, N.C.G.S. § 160A-274 expressly authorizes the Town to convey its interests in real and personal property to the City upon such terms and conditions as it deems wise, with or without consideration; and

WHEREAS, N.C.G.S. § 160A-461 *et al.* authorizes units of local government to enter into interlocal agreements with each other to execute any undertaking and allows the participating units to determine the reasonable duration of the interlocal agreements; and

WHEREAS, N.C.G.S. § 160A-461 requires that interlocal agreements be ratified by resolution of the governing board of each participating unit, and the resolution spread upon the minutes of the governing board.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the Parties hereto agree as follows:

ARTICLE 1

PURPOSES AND DESCRIPTION OF MERGER

Section 1.01. The Merger’s purposes are to:

(a) Assure the continued provision of high quality, reliable, economical, safe, and sanitary water, reclaimed water and wastewater utility services within the present and future corporate limits and Town Service Area, as shown on the map in Exhibit D;

(b) Provide for the orderly and permanent transfer of responsibility for the ownership, construction, operation, maintenance, management, and financing of the Town Utility System from Pittsboro to Sanford;

(c) Transfer from Pittsboro to Sanford the managerial, operational, and financial responsibility of operating, maintaining, and expanding the Merged Systems (as defined herein) serving the present and future corporate limits and Town Service Area, as shown on the map in Exhibit D; and

(d) Enable Sanford to operate, maintain and expand said Utility Systems to accommodate planned growth and development within Pittsboro’s planning and zoning jurisdiction in accordance with the terms and conditions hereinafter stated.

Section 1.02. Merger of the Town Utility System into the City Utility System. The City will merge the Town Utility System in its entirety into the City Utility System, taking on all the assets, liabilities, operations, maintenance, permits, contracts, agreements, allocations, customers, and any other aspects of the Town Utility System. The resulting utility systems will be known as the “Merged System.” Subsequently, the City will own and operate the Merged System for the customers of both the City and the Town.

Section 1.03. Right to Operate. Pittsboro hereby irrevocably grants Sanford the right to design, construct, operate, maintain, and perform all related activities required to operate, maintain, expand, upgrade, and improve the Town Utility System (together, the “Right to Operate”), which Right to Operate includes the right to decommission, sell, or otherwise dispose of property, in accordance with Sanford’s water, water reclamation, and sewer system standards and policies for operation and performance, level of service, reliability, and redundancy. The Right to Operate includes the encroachment authority for Sanford to operate in all public rights-of-way over which Pittsboro has the sole authority or joint authority with the North Carolina Department of Transportation. Sanford’s water, water reclamation, and sewer system standards and policies shall be applied in Pittsboro to the same extent and in the same manner as applied to other customers of the City Utility System.

ARTICLE 2

RESPONSIBILITIES, REPRESENTATIONS, AND WARRANTIES

Section 2.01. City's Responsibilities. The City will perform the services customarily performed by water, reclaimed water, and sewer utility systems with respect to the Merged System, such as:

(a) read all meters of, send all bills to, and collect all payments from the Merged System's new and existing customers, including maintaining the current location for bill payment in the Town;

(b) administer the provision of Utility Services to existing and new customers and regulate the construction of related infrastructure by developers intending to connect to the Merged System;

(c) maintain, repair, and improve the Merged System in a timely manner and operate and manage the Merged System in a manner consistent with good business and operating practices for comparable facilities and in full compliance with all issued permits, operational requirements, industry standards or heightened industry standards, for example, the use of granular activated carbon (GAC) absorbers, as set by the City now and in the future, and the applicable laws, rules, and regulations of regulatory bodies, governmental units, or agencies thereof;

(d) operate, maintain, and manage the Merged System with employees who have the operational expertise and professional credentials and licenses necessary to perform their respective duties, and perform the administrative and managerial duties required for the operation of the Utility Services and provide adequate tools and equipment for such purpose;

(e) undertake and complete all activities relating to the design, construction, startup, and operation of the Town Utility System upgrade and improvement projects agreed upon as a part of this Agreement, in accordance with the City Utility System standards for operation and performance, level of service, reliability, and redundancy;

(f) upon the completion of any construction, operation, maintenance, replacement, improvement, or related activity causing damage to Town streets or other property in Pittsboro, repair or replace such property in accordance with Pittsboro's ordinances;

(g) operate and maintain the Merged System consistent with Sanford's obligation and commitment to provide proper, efficient, and environmentally sound Utility Services now and in the future;

(h) maintain fire hydrants in a reasonable manner, with hydrant spacing and hydrant maintenance in a manner equivalent to the standards within the City, and coordinate with the Pittsboro Volunteer Fire and Rescue Department for necessary testing;

(i) solicit input from the Town on current and future Utility Services needs of the Town on at least an annual basis, as set out in Section 5.03; and

(j) provide for the current and future needs of the Town for expanded water, reclaimed water, and sewer services as set out in Article 6.

Section 2.02. Town's Responsibilities. The Town will:

- (a) provide the City with true, accurate, and complete copies of the following: the Town's current rates and fees for Utility Services; all ordinances, resolutions, contracts, agreements, and rules and regulations relating to the Town Utility System; and all other plans, specifications, and operation/maintenance manuals for the Town Utility System;
- (b) provide and transfer or assign to the City true, accurate, and complete copies of each permit, contract, and agreement associated with the Town Utility System under which the Town is obligated to perform;
- (c) accommodate and collaborate with the City as the City maintains the current location for bill payment in Pittsboro and enter into any further agreements necessary for billing and collections during the period of Transfer; and
- (d) prior to the Transfer Date or for such time as the Town remains in possession of any Transfer Items, as defined and described in Section 3.02, continue to manage and operate the Town Utility System in a manner consistent with good business and operating practices for comparable facilities and in full compliance with all issued permits, operational requirements, industry standards, and the applicable laws, rules, and regulations of regulatory bodies, governmental units, or agencies thereof.

Section 2.03. City Representations and Warranties. The City hereby represents and warrants as follows:

- (a) This Agreement, and all other documents and instruments related or required hereby, have been duly authorized, executed, and delivered by the City and constitute valid, binding, and enforceable obligations by the City.
- (b) The City's execution and delivery of this Agreement and compliance with its provisions will not conflict with or constitute a breach or violation of, or a default under any contracts or agreements to which the City is a party, any applicable law, rule, or regulation of any governmental unit or agency thereof, or any applicable judgment or decree of any court or other governmental agency or body.
- (c) The City will perform its responsibilities under this Agreement with the same reasonable care and diligence as is used when it performs those services for its customers within City limits.
- (d) The execution and delivery of this Agreement and acceptance of the conveyance of the Town Utility System to the City do not require the approval of any regulatory body, governmental unit or agency, or any other persons/entities whatsoever except as noted in this Agreement.

Section 2.04. Town Representations and Warranties. The Town hereby represents and warrants as follows:

- (a) The Town has the power and authority to assign the permits, contracts, agreements, assets, and liabilities associated with the Town Utility System to the City, and no events of Default

have occurred or are occurring thereunder; the permits, contracts, agreements, and liabilities remain in full force and effect, and are enforceable in accordance with their respective terms and conditions.

(b) This Agreement, and all other documents and instruments related hereto and/or required hereby, has/have been duly authorized, executed, and delivered by the Town and constitute valid, binding, and enforceable obligations by the Town.

(c) The Town's execution and delivery of this Agreement and compliance with its terms and conditions will not conflict with or constitute a breach or violation of, or a default under any contracts or agreements to which the Town is a party, any applicable law, rule, or regulation of any governmental unit or agency thereof, any applicable judgment or decree of any court or other governmental agency or body, or the provisions of any permits held by the Town for the ownership, operation, and maintenance of the Town Utility System.

(d) The execution and delivery of this Agreement and the conveyance of the Town Utility System to the City do not require the approval of any regulatory body, governmental unit, or agency, or any other persons/entities whatsoever except as noted in this Agreement.

(e) All permits held by the Town regarding the ownership, operation, and maintenance of the Town Utility System are in full force and effect, have been duly complied with in all material respects, and are assignable and transferable to the City.

(f) To the best of the Town's knowledge, the Town has the right to assign or otherwise transfer to the City all easements held by the Town with regard to the Town Utility System without the consent of third parties. In the event of any doubt or challenge to a specific easement, the Town agrees to cooperate with the City in executing a license or similar agreement to permit the City's use of the easement for the purposes set forth in this Agreement.

(g) All representations, warranties and/or covenants of the Town are made to the Town's actual knowledge, with no duty to investigate.

Section 2.05. Existing Town Utility System Debt and Obligation. As of the date of this Agreement, there is no debt associated with the Town Utility System. The City will not assume or reimburse any such debt.

ARTICLE 3

TRANSFER OF SYSTEM

Section 3.01. Town Utility System Description. The Town agrees to transfer to the City all real and personal property composing the Town Utility System, including, without limitation, all collection and distribution system infrastructure, all physical infrastructure, real and personal property, cash assets, relevant documents and records, customer accounts, and any other items associated with the Town Utility System (individually, these are the "Transfer Items," and the act of completely transferring all Transfer Items is the "Transfer").

Section 3.02. Execution and Transfer. The Town agrees to fully complete the Transfer as described above no later than June 30, 2024 (the "Transfer Date"). Notwithstanding the obligation

to complete the Transfer by the Transfer Date, the Town shall have a continuous obligation after June 30, 2024 to transfer any Transfer Items that should have been transferred but were not by the Transfer Date.

(a) Continued Operation Prior to Transfer Date. The City and Town contemplate that the Transfer may take place in stages and require coordination between the City and Town. As a result, the Transfer Date represents the deadline for completing the Transfer, but Transfer Items may be transferred to the City for ownership prior to the Transfer Date.

(b) Information Required Within Thirty Days of Effective Date. The Town and City must share certain information in order to complete the Transfer. Within ten (10) days of the Effective Date, the City shall make a request to the Town for documents, information, or in-person inspection of software, documents, equipment, etc., associated with the Town Utility System. Within twenty (20) days of receiving the request from the City, the Town shall provide to the City all requested documents and/or information. Any in-person inspection must be permitted within twenty (20) days of the date the City requests an in-person inspection.

(c) Form of Transfer. Transfer shall be by execution of deeds and dedication documents prepared by the Town Attorney and executed by the appropriate Town and City representatives, in addition to any other documentation, agreements, or bills of sale necessary to complete the Transfer. The Town shall convey to the City the Town Utility System by delivering a deed or deeds for the Town's real property in the Town Utility System, including, but not limited to, transfer or assignment of Utility Services easements owned by the Town, and an Assignment and Bill of Sale for the Town's personal property including, *inter alia*, the Town Utility System infrastructure, facilities, structures (*e.g.*, lift stations, water towers), vehicles, equipment, supplies, funds, permits, agreements, contracts (including, but not limited to, leases to any wireless systems that co-locate on the water towers), other property rights, liabilities, and all other materials and things associated with or required for the ownership, operation, and maintenance of the Town Utility System by the City.

(d) Easements. In accordance with subsection (a), City will have the Right to Operate new water, water reclamation, and sewer infrastructure within any easements, rights-of-way, and utility encroachments. Any new easement required to expand the Town Utility System shall be the responsibility of the City except as provided in this Agreement.

(e) Effect of Transfer. Upon Transfer, the City shall own, operate, and maintain the Town Utility System. The current Town water customers will become customers of the City. The City shall assume billing for the Town Utility System by June 30, 2024.

(f) State Forms or Applications Required. The Town and City agree to execute any North Carolina Department of Environmental Quality forms or any other applications, permissions, etc., required to transfer or assign any necessary permits for the operation and maintenance of the Town Utility System.

(g) Interlocal Agreement for the Sanford Water Treatment Plant Expansion. As a result of this Merger, and pursuant to Section 13 of the Interlocal Agreement for the Sanford Water Treatment Plant Expansion, the Town hereby transfers and the City hereby accepts all of the Town's rights and obligations under that agreement.

Section 3.03. Offers of Employment. The City shall make an offer of employment to all employees of the Town who are employed as of the Transfer Date and who are eligible under this subsection. Employment with the City may begin on or after August 2, 2023, but before June 30, 2024, at the discretion of the City. To be eligible for an offer of employment, a Full-Time Employee (“FTE”) must serve in a current role with the Town which will be affected by the conveyance of the Town Utility System to the City. An employee who is paid in whole or in part out of the Town’s utility enterprise fund is assumed to be “affected.” Prior to the Transfer Date, the Town will provide to the City a list of employees who have been affected by the conveyance. If accepted by the FTE, employment with the City shall be effective immediately. Offers of employment shall be on terms and conditions and include benefits and perquisites substantially equal to those of current City employees in similar positions. Leave accumulation shall be calculated with length of service to the Town credited as length of service with the City, and transferred FTEs shall have the right to participate in all City employee benefit programs on equal terms with other City employees. Any FTE offered employment with the City shall retain previously accrued sick leave and vacation leave. In the event that the Transfer contemplated by this Agreement is not consummated, any offer of employment shall be void and of no further force or effect.

Section 3.04. System Integration. The Parties agree to work collaboratively to resolve any system integration issues. Unless otherwise agreed to, the Town Utility System infrastructure, meters, software, billing & accounts, customer service, and other systems will be integrated with the City Utility System no later than June 30, 2024.

Section 3.05. Information, Records, and Assets Transferred by the Town. The list of information, records, and assets to be transferred by the Town to the City is to be set out in Exhibit B, “List of Assets to be Transferred,” and Exhibit C, “List of Documents and Records to be Transferred,” within thirty (30) days of the Effective Date.

Section 3.06. Allocation of Costs and Payments. All of the Town Utility System’s deposits, reserves, accounts receivable, accounts payable, and cash on hand will be transferred and/or assigned to the City. The Town may pay any amounts remaining as current accounts payable from the Town Utility System reserve funds prior to the Transfer Date. Cost of transfer from Pittsboro to Sanford will be paid by Sanford and recovered through rates, fees, and charges for new and existing customers of the Town Utility System and from transferred reserve funds from Pittsboro.

Section 3.07. Recovery in Pending Litigation. If there is a monetary recovery in the litigation Town of Pittsboro v. 3M Company et al, 2:23-cv-01150-RMG, pending in the United States District Court for the District of South Carolina, then that portion of the recovery that can reasonably be attributed to past costs and damages incurred by Town shall be credited against the City’s debt service obligations attributable to the Utility Services for the Town Service Area, and any portion of the recovery that can reasonably be attributed to the cost of future capital, operation, or maintenance of the Merged System shall be credited to the Merged System.

Section 3.08. No General Fund Liability. It is the intent of the Parties that after the completion of the Transfer of all assets and employees from the Town to the City, there shall be no residual liability to the Town’s General Fund. During the period of Transition, Pittsboro will retain liability for, and maintain insurance coverage for, all assets and employees until the time of transfer, and

Sanford will accept liability for and will procure insurance coverage for, all transferred assets and employees at the time of transfer.

ARTICLE 4

CAPITAL IMPROVEMENTS

Section 4.01. Phase 1 Capital Improvements. The Parties agree that the following are capital improvements that must be completed by Sanford:

(a) Force Main from Pittsboro to Sanford (“Force Main”). The project undertaken by the Town and City to design, permit, and construct a 2 Million Gallons per Day (MGD) force main transmission line running along US Highway 15-501 from the Town to the City in order to convey the Town’s wastewater.

(b) Sanford Water Treatment Plan Upgrade (“Expanded WFF”). The expansion of the Sanford Water Filtration Facility will be expanded from 12 MGD capacity to 30 MGD capacity.

(c) Water Transmission from Triangle Innovation Point to Pittsboro (“Transmission Line”). A water transmission line running from Triangle Innovation Point to Pittsboro.

Section 4.02. Phase 2 Capital Improvements. The Parties agree that the following capital improvements, or such other capital improvements that will provide equivalent capacity, are the planned capital improvements following Phase 1:

(a) Force Main Upgrade to 5 MGD (“Force Main Upgrade”). An upgrade of the Force Main to 5 MGD force main.

(b) Expansion or Replacement of BBWRC. The expansion or replacement of the Big Buffalo Water Reclamation Center (“BBWRC”) for additional wastewater capacity (“BBWRC Improvements”).

Section 4.03. Commitment to Seek Funding. The City will take reasonable and necessary steps to seek funding, which includes grants, State loans, and other forms of contributions other than rates, for the Capital Improvements listed in Sections 4.01 and 4.02. Nothing in this section shall be interpreted to limit the City’s authority to set rates, as set out in Section 5.02.

ARTICLE 5

RATES AND RATE PARITY

Section 5.01. Utility Rates. One goal of this Merger is to achieve rate parity between the Town and all other constituent pieces of the Merged System. However, it is also the intent of this Merger that the City’s rate payers will not be required to subsidize the operating costs or known capital improvement costs of the Town Utility System, and the Town’s rate payers will not be required to subsidize the operating costs or known capital improvement costs of the City Utility System. To this end, the Parties acknowledge and agree that the rates and system development fees charged to the customers within the Town limits shall be set at a level sufficient to support the construction, operation, and maintenance of the Town Utility System and the Phase 1 and Phase 2 Capital Improvements for the Town Utility System, as listed in Article 4.

Section 5.02. Authority to Set Rates. From and after the Effective Date, all rates, charges, fees, deposit rates, penalties, and system development fees associated with the Merged System shall be set by the City. The City will set and charge rates in accordance with operation and maintenance expenses, routine capital expenditures, debt service expense, and necessary reserve funding. Notwithstanding the foregoing, except for system development fees, the rates, charges, fees, deposit rates, and penalties shall be no higher than those set by the Town in its FY2024 Budget Ordinance. The Town acknowledges that the City intends to retain the system development fee for residential ½” Meter Size at \$8,000 for water and \$7,500 for sewer for a combined total of \$15,500. Exhibit F provides the intended initial system development fees for the Pittsboro Service Area for all Meter Sizes.

Section 5.03. Rate, Fees, Penalties, and Charges Consultation. The City agrees to consult with the Town about rates (1) prior to any increase in rates, fees, penalties, or charges; and (2) at least once annually. During that consultation, the Town shall have the option to pay to Sanford, as by law provided, the costs associated with capital improvements, maintenance, operations, or any other Town Utility System needs that would otherwise require an increase to rates, charges, and fees.

Section 5.04. Rate Parity. The date that Rate Parity is achieved will be impacted by a number of factors, including, but not limited to, the amount of debt needed to pay for capital improvements and the amount of revenue generated by increased consumption, economies of scale, and grants and other funding opportunities. The following are the conditions that describe when rate parity will be achieved (“Date of Rate Parity”):

(a) If all water service provided to Pittsboro is being treated in the Expanded WFF, the portion of rates that reflect the cost of treating water and wastewater shall be in parity once the Phase 1 Capital Improvements are completed and operational. If some portion of water provided to Pittsboro is being provided by the Pittsboro Haw River Water Treatment Plant, any variance will be reflective of the difference in cost between providing water from the Pittsboro Haw River Water Treatment Plant and the Expanded WFF.

(b) The portion of rates that reflect the cost of repairing or upgrading the existing Town Utility System shall be in parity once the system has been assessed and any necessary repairs and upgrades made. By June 1 of each year, the City shall provide the Town with a then-current list of identified Town Utility System deficiencies, if any, and the estimated cost and schedule for repairing or upgrading the Town Utility System.

(c) The portion of rates and system development fees for capital projects shall be in parity once Sanford no longer has debt service obligations for the Phase 1 and Phase 2 Capital Improvements.

Section 5.05. Pittsboro’s Haw River Water Treatment Plant. If Sanford decommissions Pittsboro’s Haw River Water Treatment Plant, the Parties will seek to apply any third-party funding that was previously dedicated to upgrading or expanding the Haw River Water Treatment Plant to Pittsboro’s debt associated with the Phase 1 or Phase 2 Capital Improvements, as permitted by law. If Sanford sells Pittsboro’s Haw River Water Treatment Plant, eighty-seven and a half percent (87.5%) of the proceeds must be applied to Pittsboro’s debt associated with the Phase 1 or Phase

2 Capital Improvements, and the remaining twelve and a half percent (12.5%) may be used for the Merged System at Sanford's discretion.

ARTICLE 6

GROWTH AND EXPANSION

Section 6.01. Authority to Operate, Maintain, and Expand. Unless otherwise stated in this Agreement, the City shall have sole authority and discretion as provided by law to operate, maintain, and expand the Merged System, set rates, fees, penalties, and charges.

Section 6.02. No Interbasin Transfer Contemplated. The Parties do not contemplate the need for an Interbasin Transfer Certificate at this time. The Parties agree to cooperate and pursue an Interbasin Transfer Certificate if one is needed in the future.

Section 6.03. Growth Management. Land use approvals by the Town must include a utility service review for decision by the City. Upon Transfer, all future requests for new service connections will be made to the City for the City's review and decision. If a request for new service connections would, if granted, require a larger allocation of capacity than is available according to Section 6.05, the request will only be granted where the requesting developer or land use applicant pays for the capital improvements needed to meet the additional capacity needs.

Section 6.04. Annexation Required. If a request for new service connections is for a property that is located within the area defined as "Town Service Area" in Exhibit D, the City's approval of the new request for service connections for the property shall be conditioned upon the property being annexed into the Town.

Section 6.05. Growth. The City will use the following phases for wastewater and water in order to make decisions about requests for new service.

(a) Wastewater Allocation Growth.

(i) From the date that (a) funding sources for the actual funding required for the Force Main, currently estimated in Exhibit E is secured; (b) the Force Main is complete; and (c) the Force Main is operational, the Town will have access to a 2,000,000 gallons per day (2.0 MGD) of wastewater treatment capacity;

(ii) From the date that (a) funding sources for the actual funding required for the Force Main Upgrade and the BBWRC Improvements, currently estimated in Exhibit E, are secured; (b) the Force Main Upgrade and BBWRC Improvements are complete; and (c) the Force Main Upgrade and BBWRC Improvements are operational, the Town's access to wastewater treatment capacity will increase with additional 3,000,000 gallons per day (3.0 MGD) of wastewater treatment capacity; and

(iii) On the Date of Rate Parity and thereafter, the City will provide additional wastewater supply capacity as necessary to accommodate new growth and development within the corporate limits of the Town and land annexed into the Town at a growth rate set based on the same formula and methodology used to set Sanford's growth rate (the "Wastewater Growth Rate").

(b) Water Allocation Growth.

(i) From and after the date that (a) funding sources for the actual funding required for the Expanded WFF and Transmission Line, currently estimated in Exhibit E, are secured; (b) the Expanded WFF and Transmission Line are completed; and (c) the Expanded WFF and Transmission Line are operational, the City will provide access to 3,000,000 gallons per day (3.0 MGD) of water treatment capacity to the Town.

(ii) On the Date of Rate Parity and thereafter, the City will provide additional water supply capacity as necessary to accommodate new growth and development within the corporate limits of the Town and land annexed into the Town at a growth rate set based on the same formula and methodology used to set Sanford's growth rate (the "Water Growth Rate").

(c) The Growth Rates are a projection for planning purposes and not a guarantee of specific capacity. If the Town's growth demands more capacity for water or wastewater than that set out in Section 6.05(a)(ii) and (b)(i), respectively, prior to the Date of Rate Parity, the City and Town will consult about the need to plan for and have access to additional capacity.

Section 6.06. Growth Levels Subject to Modification. The Growth Rate stated in Section 6.05(a)(iii) & 6.05(b)(ii) are subject to modification by the City if: (a) problems are encountered with the implementation of capital improvements of Sections 4.01 and 4.02; (b) there are changes in the Town's continued access to capacity allocations if such changes are outside of the City's control; or (c) there are reductions or failures of pressure or supply due to main supply line breaks, power failures, floods, fire and the use of water to fight fires, earthquakes, water conservation measures and other causes beyond the City's control for such reasonable period of time as may be necessary to restore normal service.

Section 6.07. Other Agreements Permitted. Nothing in this Agreement restricts the Parties from agreeing to additional water and/or wastewater service agreements outside of this Agreement or relying on additional water and/or wastewater service agreements to meet the Town's water and wastewater capacity needs.

Section 6.08. First Come, First Served. The City intends to allocate wastewater within the Pittsboro Service Area on a "first come, first served" basis. Notwithstanding the foregoing, until the Wastewater Treatment Facility Expansion is under construction, the City has the right to commit to serve the wastewater flow projections through 2031 according to the schedule attached hereto as Exhibit G, with wastewater service to such projects only upon a land use approval by the Town. Once the Force Main Upgrade is under construction, City policies regarding utility extensions shall apply.

Section 6.09. Revisions to the Growth Rate. Once every two years, the City may revise the Growth Rate projected for the previous two years if the Town's residential and economic development needs do not grow at the expected rate of projection. Industry growth will be evaluated on a case-by-case basis.

Section 6.10. City Ordinances, Policies, and Standards Apply. Pittsboro shall adopt such ordinances as are reasonably necessary to regulate the proper use of the Town Utility System and

any extensions thereof by the customers and users within the jurisdiction of Pittsboro. Said ordinances shall be reviewed and approved by Sanford prior to adoption by Pittsboro, and further grant to Sanford all administrative, permitting, regulatory, and enforcement authority necessary for the regulation, operation, maintenance, and improvement of the Town Utility System serving the Town Service Area limits of Pittsboro. Pittsboro shall update such ordinances as necessary to have the same or similar provisions as in Sanford's ordinances regarding the Merged System. Sanford and Pittsboro shall each have equal authority to enforce any Town utility related ordinance or regulation.

ARTICLE 7

GENERAL TERMS

Section 7.01. Specific Performance in Event of Default. The Parties acknowledge that monetary damages would not fully compensate either Party in the event of any breach or Default of this Agreement. The Parties therefore agree that in the event of a breach or Default by either Party, the other Party shall, in addition to seeking damages, be entitled to seek and obtain the specific performance of the defaulting Party's obligations hereunder.

Section 7.02. Term of the Agreement. This Agreement shall be perpetual. The Town and the City hereby agree that such perpetual duration is reasonable and necessary in light of the purposes of this Agreement. If for any reason a court of competent jurisdiction rules in a final decision that may not be appealed that a perpetual term to this Agreement is unlawful, then this Agreement shall have a term of ninety-nine (99) years (the "Term"). If the Term of this Agreement is so limited to ninety-nine (99) years, the expiration of the Term shall only affect the agreements hereunder with respect to events and performances that occur after the expiration date of such term, and shall not affect the existence or validity of any transfer, conveyance, undertaking, liability, or other action or right that occurred or arose prior to the expiration date.

Section 7.03. Cooperation of the Parties. The Town and the City agree to cooperate, fully, effectively, and efficiently with each other to accomplish the intent and purposes of this Agreement, execute all supplementary documents necessary to enforce its terms, and to take all additional actions deemed necessary and appropriate so as to give full force and effect to the terms, conditions, and intent of this Agreement. Neither Party shall unreasonably withhold or delay providing such cooperation. The Town further agrees to provide to the City, if requested, all plans, as-built drawings, financial information, and all other information, documents, materials, and other things in its possession or control associated with the Town Utility System, and the performance of the terms and conditions set forth herein.

Section 7.04. Dispute Resolution. In the event of conflict or Default that might arise, the Parties involved agree to informally and formally communicate to resolve the conflict. If this communication is not successful in resolving the conflict, the matter will be presented to the City Manager of Sanford and the Town Manager of Pittsboro for consultation.

Section 7.05. Disposition of Property at Termination. Upon termination of this Agreement prior to the Transfer Date, all real property that is subject to this Agreement reverts to the Party that owned it at the time this Agreement was executed. Upon termination of this Agreement after the Transfer Date, all real property that is subject to this Agreement reverts to the City.

Section 7.06. Method of Termination. This Agreement may be terminated only by the mutual consent of all Parties participating in this Agreement.

Section 7.07. Disposition of Property at Expiration. All property, real or personal, shall remain with the City upon termination or expiration of this Agreement.

Section 7.08. Force Majeure. A Force Majeure is defined as any event arising from causes beyond the reasonable control of the Parties. It shall not be considered a breach of this Agreement or an event of Default, and Parties shall not be responsible for an inability to perform or for any delays, damages, costs, expenses, liabilities, or other consequences that may arise as a result of Force Majeure.

Section 7.09. Entire Agreement. This Agreement constitutes the entire understanding between the Parties and supersedes all prior and independent agreements between the Parties covering the subject matter hereof.

Section 7.10. Third-Party Beneficiaries. The existing or future users of the Merged Utility System shall not be deemed to be third-party beneficiaries of this Agreement and neither the Town nor the City shall have any obligation to them, nor shall they be entitled to any rights hereunder.

Section 7.11. Amendments. Pursuant to N.C. Gen. Stat. § 160A-464 this Agreement may be amended or terminated by mutual agreement between the Parties. Termination shall not affect the validity of any transfers of property or assets previously completed unless mutually agreed otherwise between the Parties.

Section 7.12. Implementation. The City and Town Managers are authorized to determine implementation details not covered in this Agreement so long as such determinations substantially conform with the material terms of this Agreement and applicable law.

Section 7.13. Authorization. Each Party certifies that all appropriate steps to legally enter into this Agreement have been taken, including approval by the appropriate governing body. Moreover, each Party certifies that all laws, rules, and regulations as well as any local governmental rules were followed with regard to approval of this Agreement and that this Agreement meets all standards for governmental agreements.

Section 7.14. Section Headings. The section headings in this Agreement are for convenience and ease of reference only. Such headings are not part of this Agreement and are not to be used in interpreting its provisions.

Section 7.15. Governing Law. This Agreement shall be governed by and interpreted in accordance with the law of the State of North Carolina.

Section 7.16. Severability. The paragraphs, sections, sentences, clauses, and phrases of this Agreement are severable. If one or more paragraphs, sections, sentences, clauses, or phrases shall be declared void, invalid, or otherwise unenforceable for any reason by the valid, final judgment, or decree of any court of competent jurisdiction, such judgment or decree shall not affect the remaining provisions of this Agreement.

Section 7.17. Signatures. This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement.

Section 7.18. Notices. Unless specifically provided otherwise by this Agreement, any notice which a Party is required to or may give to another Party shall be in writing and shall be delivered or addressed to the other applicable Party at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or by email with a hard copy to be delivered by independent courier service by the next business day. All notices to the Town shall be addressed to:

Town Manager
Town of Pittsboro
635 East Street
P.O. Box 759
Pittsboro, NC 27312

With a copy to the Town Attorney:

Paul S. Messick, Jr.
Gunn & Messick, PLLC
90 West Salisbury Street
P. O. Box 880
Pittsboro, NC 27312
Telephone (919) 542-3253
Facsimile: (919) 542-0257
Electronic Mail: pm@gunnmessick.com

All notices to the City shall be addressed to:

City Manager
City of Sanford
225 E Weatherspoon Street
P.O. BOX 3729
Sanford, NC 27331

With a copy to the City Attorney:

Susan Patterson
City Attorney
225 E Weatherspoon Street
P.O. BOX 3729
Sanford, NC 27331
Phone: 919-777-1104
Electronic Mail: susan.patterson@sanfordnc.net

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto, acting by and through their duly authorized representatives pursuant to the resolutions of their respective governing bodies, have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

City of Sanford

City Clerk

By: _____
Rebecca Wyhof Salmon, Mayor

[SEAL]

ATTEST:

Town of Pittsboro

Town Clerk

By: _____
Cindy Perry, Mayor

[SEAL]

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

Name:
Title:

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

Name:
Title:

APPROVED AS TO FORM

APPROVED AS TO FORM

Paul S. Messick, Jr.
Town Attorney, Town of Pittsboro

Susan Patterson
City Attorney, City of Sanford

EXHIBIT A

DEFINITIONS

BBWRC Improvements means the expansion or replacement of the Big Buffalo Water Reclamation Center for additional capacity.

City shall mean the City of Sanford, a municipal corporation of the State of North Carolina.

City Utility System means the water, water reclamation, and sewer systems owned, operated, and maintained by the City within and outside the City's corporate limits.

Default shall mean the failure, refusal, or inability of a Party to meet an obligation set out in this Agreement.

FTE shall mean a Full-Time Employee of the Town who is employed as of the Transfer Date and is eligible for an offer of employment from the City if the individual serves in a current role with the Town who will be affected by the conveyance of the Town Utility System to the City.

Force Main means the project undertaken by the Town and City to design, permit, and construct a 2 Million Gallons per Day (MGD) force main transmission line running along US Highway 15-501 from the Town to the City in order to convey the Town's wastewater.

Force Main Upgrade means an upgrade of the Force Main to 5 MGD force main.

Interbasin Transfer Certificate means the certificate required by N.C. Gen. Stat. Ann. § Ch. 143, art. 21, Pt. 2A.

Parties shall mean the City of Sanford and the Town of Pittsboro. When used in the singular, "Party" shall refer to only the relevant party in the context of this Agreement.

Town shall mean the Town of Pittsboro, a municipal corporation of the State of North Carolina.

Town Utility System means the water, water reclamation, and sewer systems owned, operated, and maintained by the Town within and outside the Town's corporate limits.

Transfer shall mean the Town's transfer to the City of all real and personal property composing the Town Utility System, including, without limitation, all collection and distribution system infrastructure, all physical infrastructure, real and personal property, cash assets, relevant documents and records, and existing and future customer accounts associated with the Town Utility System.

Transfer Date shall mean the date on which the Transfer occurs. The Transfer Date shall be no later than June 30, 2024.

Utility Services means water, reclaimed water, and sewer services.

EXHIBIT B
LIST OF ASSETS TO BE TRANSFERRED

EXHIBIT C
LIST OF DOCUMENTS AND RECORDS TO BE TRANSFERRED

EXHIBIT D
TOWN SERVICE AREA

EXHIBIT E
PHASE 1 & PHASE 2 CAPITAL IMPROVEMENTS

EXHIBIT F
PITTSBORO SERVICE AREA INITIAL SYSTEM DEVELOPMENT FEES

EXHIBIT G
CPI'S WASTEWATER FLOW PROJECTIONS