

MEMORANDUM

TO: Town Council

FROM: Bill Bruce

DATE: January 26, 2023

RE: Interlocal Agreement

Please find in your packets an Interlocal Agreement with the Winston-Salem/Forsyth County Utility Commission for the sale of water to the Town of Oak Ridge. The Water Advisory Committee has reviewed multiple drafts of the agreement over the last six months, and recommends the attached Agreement for Town Council's approval.

The Agreement authorizes the sale of up to 350,000 gallons per day of potable water for the Town's distribution and use. The Town will be subject to the Commission's wholesale rate of \$517.24 (monthly readiness-to-serve charge for 8" meter) + approximately \$3.60/1000 gallons. The Utility Commission would install a meter at the line's current terminus on NC 150 at the county line, at which point the Town would access with a 12" main (under design) to deliver water to customers along NC 150 and to the proposed elevated tank behind Town Hall. Additional infrastructure including backflow prevention and a future booster pump station will be required and is also under design. Hydrants will be spaced at 1000-foot intervals along the length of the line as well.

If approved, the Town must commence using water within four years, after which time, if the Town has not begun using water, the Agreement will automatically terminate without penalty. The Agreement further requires the payment of a one-time Reserve Capacity Fee of \$224,000, which reserves the Town's maximum daily allowance throughout the agreement's thirty-year term. This fee must be paid within the same four-year time-frame, or by installment subject to the Commission's terms. These are revised terms that were not in the previous draft distributed to Council. The Utility Commission also advised that the Reserve Capacity Fee calculation was incorrect in the previous draft, and has been increased to \$224,000.

The Agreement has been reviewed and approved for legal sufficiency by Town Attorney Thomas.

Requested Action: Approve the attached interlocal agreement with the Winston-Salem/Forsyth County Utility Commission.



This AGREEMENT is made and entered into this _____ day of _____, 2023, by and between the WINSTON-SALEM/FORSYTH COUNTY UTILITY COMMISSION, a joint agency of the City of Winston-Salem and Forsyth County, North Carolina (hereinafter called the "Seller"), and the TOWN OF OAK RIDGE, (hereinafter called the "Purchaser") a North Carolina municipal corporation. The Seller and the Purchaser are each a "party" to this Agreement, and the two of them are the "parties" to this Agreement.

WITNESSETH:

WHEREAS, the Purchaser owns and operates a municipal water system and wishes to purchase water for that system from the Seller in order to sell water to Purchaser's customers, and

WHEREAS, to purchase water from the Seller, the Purchaser anticipates making a significant investment, in order to extend its current water system to a connection point on Seller's system at which the Purchaser can take delivery of the Seller 's water; and

WHEREAS, the Seller owns and operates a water system with excess capacity, and the Seller wishes to sell excess water to the Purchaser; and

WHEREAS, the parties wish to enter into a mutually advantageous agreement, whereby the Purchaser will purchase from the Seller up to 0.35 million gallons per day (hereinafter, "0.35 MGD) of water, and will pay for it at the wholesale rate indicated in the Seller's Water System Policy Resolution, as periodically updated.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions contained herein, and accruing to the benefit of each of the respective parties hereto, the Purchaser and Seller agree as follows:

I. Representations and Warranties.

- (a) Purchaser is a political subdivision of the State of North Carolina and a municipal corporation. Those signing on behalf of the Purchaser have been authorized by the Town Council of the Town of Oak Ridge to execute this Agreement on behalf of the Purchaser.
- (b) The Seller is a joint agency of Forsyth County and the City of Winston-Salem, organized under the laws of the State of North Carolina and a body politic and corporate. Those signing on behalf of the Seller have been authorized by the Winston-Salem/Forsyth County Utility Commission to execute this Agreement on behalf of the Seller.
- (c) The Purchaser is unaware of any judgment, order, court ruling, contract, or instrument that would be violated by the Purchaser entering into this Agreement. The Purchaser is unaware of

any pending or threatened litigation against it that would impair its ability to perform its duties and obligations under this Agreement.

II. Quantity of Water Purchased.

- (a) The Purchaser may use and purchase up to 0.35 MGD of Seller's water (hereinafter, the "Maximum Flow Rate"). Regardless of how much water Purchaser actually uses, Purchaser will be charged, at a minimum, the appropriate minimum readiness-to-serve charge indicated in the Seller's Water System Policy Resolution, as well as the Reserve Capacity Fee outlined in Subsection IX(c), below. If Purchaser's consumption averages 80% (eighty percent) of the Maximum Flow Rate over a period of 6 (six) consecutive months the parties agree the amount and purchase terms shall be renegotiated to protect the mutual interests of the parties.
- (b) The meter at the Metered Point (as defined below) will be read approximately every thirty (30) days by the Seller for the purpose of calculating its invoices to the Purchaser.
- (c) The Purchaser may read the meter as often as it chooses for purposes of setting a flow rate. The Purchaser may adjust its consumption, in order to achieve its desired daily flow rate, as long as the Purchaser complies with the 0.35 MGD limit imposed by Section II(a) of this Agreement. The Purchaser shall provide a forecast of future water demand and shall update said forecast on an annual basis, said date to be established by the Seller.
- (d) Notwithstanding any other provision of this Agreement to the contrary, Purchaser shall be temporarily relieved of its obligation to purchase water, and Seller may not supply Purchaser water, during any time period when Seller lacks sufficient water to meet all of its customers' demands because of circumstances beyond Seller's control (which may include, but are not limited to, a drought, but which do not include Seller agreeing to serve new customers when it lacks sufficient water capacity to fully serve both those new customers and Purchaser). In that event, the Seller's Water Conservation Plan shall apply.

III. Point of Delivery.

The Seller agrees to deliver water to the Purchaser at a metered point ("Metered Point"), which the Seller will install, and which will be located inside Guilford County, inside the Guilford County line (the border between Forsyth and Guilford Counties, on the Guilford County side) and extending the minimum distance required by engineering and topographic necessity. The Purchaser may connect one or more water lines to the Metered Point, on the Guilford County side of the Metered Point. The meter that the Seller installs at the Metered Point will be sized appropriately to match the size of the lines to which the meter will be connected (as the Seller shall, in its sole and absolute discretion, determine) and the Purchaser will reimburse the Seller, within 30 (thirty) calendar days of the date of invoice, for the cost of the meter, as indicated in the Seller's Water System Policy Resolution or any subsequent amendments thereto. Any replacement or other meters subsequently needed at the Metered Point shall, similarly, be installed by the Seller and paid for by the Purchaser. Seller shall routinely inspect, test, and maintain meter regardless of any suspected irregularities, and Seller shall repair or replace meter if suspected irregularities are confirmed. The Purchaser, hereby, acknowledges and agrees that the Seller shall have the right to enter the Purchaser's

property, with written notice, when practical, to Purchaser, to install, inspect, test, maintain, repair, and replace the meters at the Metered Point.

Purchaser shall promptly report to Seller any malfunction or other problem that Purchaser detects in a meter at the Metered Point.

IV. Water Lines and Backflow Prevention Devices.

- (a) The Purchaser acknowledges that the Seller's existing supply line extends almost to the Forsyth County-Guilford County line. The Purchaser expressly agrees that it will, at its sole cost and expense, design and extend said line, exclusively within Seller's public right-of-way, to the border between Forsyth and Guilford Counties. The Purchaser will submit the design and specifications for said line to the Seller for review and, upon Seller's approval of the design and specifications, the Purchaser will extend said line, within Forsyth County, to the border between Forsyth and Guilford Counties. Upon satisfactory completion of construction, as mutually agreed to between Seller and Purchaser, the line will automatically be conveyed to Seller, without compensation, for Seller to own, operate, and maintain. The design, construction or installation, inspection, maintenance, repair, and reconstruction of water lines and devices downstream of the Metered Point, and the cost thereof, shall be the Purchaser's sole responsibility, and the Seller shall have no obligation or responsibility in connection therewith. All said water lines and devices downstream of the Metered Point, within Guilford County, shall be and remain the Purchaser's property.
- (b) The Purchaser shall install an appropriate backflow prevention device at the Metered Point, and that device must satisfy the Seller's standard specifications for lines and devices connected to Seller's water system, and all applicable state and local laws, rules, and regulations. The Purchaser shall inspect and test its backflow prevention device or cause it to be inspected, at least once per year. The Seller also reserves the right to reasonably inspect and test the backflow prevention device but shall have no obligation to do so. The testing results and records shall be shared between the parties. In the event that a backflow prevention device malfunctions or fails, the Purchaser will recalibrate, repair, or replace the backflow prevention device and upgrade the vault in which it sits, as Seller directs and in accord with the Seller's standards and specifications in effect at the time. Seller shall not be responsible for the inspection, testing, upkeep, maintenance, recalibration, repair, or replacement of any backflow prevention device that Purchaser installs at the Metered Point or the upgrade of any vault, and the costs of any inspections, tests, upkeep, maintenance, recalibrations, repairs, replacements and/or upgrades of those devices shall be paid by the Purchaser. The Seller shall not be required to provide to the Purchaser more than the Maximum Flow Rate, as provided for in Subsections II(a) and (c) and Section V of this Agreement, even if the Purchaser experiences water loss due to repair problems associated with the backflow prevention device at the Metered Point.
- (c) As demand from the Town of Oak Ridge increases, additional supply lines from the Seller's existing distribution system to the Metered Point may be required. Seller may elect to design and construct the additional supply lines or to require that Purchaser do so, at Purchaser's sole cost and expense. Purchaser will acquire and pay all the costs to acquire any and all real property

interests necessary, if any, to construct the additional supply lines, whether they are constructed by Seller or Purchaser. The real property must be deeded to the City of Winston-Salem at least thirty (30) days before a contract for construction is awarded. If Seller designs and constructs the additional supply lines, then Purchaser shall reimburse Seller the amounts of the winning design proposal and construction bid, at least 30 (thirty) calendar days prior to the award of the contracts for each. Both parties, however, acknowledge that any such advance is an estimated cost, and subject to adjustment. Final billing shall be based upon, and Purchaser shall pay to Seller, Seller's actual cost for design and construction. If the amount Purchaser shall have already paid is less than Seller's actual cost, then Purchaser shall remit to Seller reimbursement for the additional cost within sixty (60) days after the date of an invoice from Seller to Purchaser therefor. If Purchaser does not pay said invoice within sixty (60) days of the date of invoice, then Seller shall charge a late payment penalty and interest, at the maximum amount authorized by applicable law, on any unpaid balance due. Once Seller completes construction of the supply lines, Seller will return to Purchaser any overpayment by Purchaser.

The Purchaser, on its side of the Metered Point, shall be permitted to connect whatever types and sizes of water lines and related equipment to the Metered Point, as are necessary or appropriate to enable the Purchaser to purchase the amount of water provided for by this Agreement, except that those lines and equipment must satisfy the Seller's standard specifications for lines and devices connected to Seller 's water system.

The Purchaser shall submit the design and specifications for any supply and other water lines and other equipment it proposes to construct and /or connect to the Seller's water system, to the Seller, for review and approval, prior to construction, but Seller shall not, thereby, become responsible for any deficiencies in the lines or other equipment's design or construction. Seller, hereby, disclaims responsibility for, and Purchaser, hereby, acknowledges that Seller shall not be responsible for, any claims or liabilities in connection therewith.

- (d) Except as otherwise expressly specified herein, nothing in this Agreement shall grant to the Seller any ownership rights in the Purchaser's water lines or equipment downstream of the Metered Point or in any other water lines or equipment of the Purchaser. The preceding sentence shall not apply to supply lines, which shall become the property of the Seller, upon satisfactory completion of construction, in accordance with the terms of the relevant Application and Conveyance Agreement, and acceptance of the lines by the Seller.

V. Flow Rate.

The Seller shall provide the Purchaser the Maximum Flow Rate previously indicated in Subsection II (a) of this Agreement. Said Maximum Flow Rate is an average daily figure and is subject to the conditions in the Seller 's Water System Policy Resolution ("Resolution"), a copy of which is attached and incorporated by reference herein. The average daily flow is calculated on a monthly basis. In the event of a fire or other emergency that causes the Purchaser to need a larger volume of water, the Maximum Flow Rate may be exceeded, subject to the Seller's ability to furnish additional water. In such case, the Purchaser shall give the Seller written notice of the fire or other emergency as soon as possible after such event, but, in no case later than 24 hours after such event.

The Purchaser may, from time to time, need to take its elevated storage tank out of service for maintenance or other needs. The Purchaser will give the Seller reasonable notice, but, in any case, a minimum of two weeks' notice, prior to taking its tank out of service, and the Seller shall work with the Purchaser to maintain reasonable service to the Purchaser's customers during the time that the Purchaser's tank is out of service.

VI. Compliance with Applicable Law.

- (a) Each party's performance under this Agreement is subject to such federal, state, and local laws and regulations as may be applicable, and the Seller and Purchaser will collaborate in obtaining any necessary permits or certificates as may be required to comply with those legal requirements. If, after the date of this Agreement's execution, any changes occur in applicable federal, state, or local laws or regulations, the provisions of this Agreement will be deemed automatically amended to comply therewith, without the need for any action on the part of either party, provided that, if any such change materially and adversely impacts the right of a party hereunder, said party may terminate the Agreement by giving the other party 12 (twelve) months' prior written notice.
- (b) The Purchaser agrees to operate all portions of the water system that it owns or controls, downstream from the Metered Point, in compliance with all applicable federal, state, and local laws and regulations.

VII. Records.

Each party agrees to keep and maintain records related to its performance under this Agreement, and in accordance with applicable state and local laws and regulations and agrees that any such records which are public records may be examined and copied by the other party or its representatives during regular business hours.

VIII. Term and Termination.

- (a) This Agreement shall begin on the date that it has been signed by both parties (the "Effective Date"). The term of the Agreement will be 30 (thirty) years from the Effective Date. Purchaser agrees that it will commence using Seller's water within four (4) years of the Effective Date, after which time, if Purchaser has not commenced using water, the Agreement will automatically terminate, without further action on the part of either party. If the Seller contends that the Purchaser has breached a material term of this Agreement [other than non-payment of an invoice, the remedy for which is addressed in Subsection IX(b), below, and failure to submit a request and plan to Seller to increase capacity, the remedy for which is addressed in Subsection II(a), above], the Seller shall provide written notice to the Purchaser detailing the breach, and the Purchaser shall have 30 (thirty) calendar days from the date of the notice to cure that breach (or, if the breach cannot reasonably be cured within 30 calendar days, to make reasonable efforts to begin curing the breach and to continue diligently working to cure the breach after the 30 days have ended, until the breach is cured, provided that the breach must, in any event, and nothing else to the contrary withstanding, be cured within 90 (ninety) calendar days of the date of Seller's notice to Purchaser of the breach). If the Purchaser

does not cure the breach or make reasonable efforts to begin curing the breach, as applicable, within the specified time periods, or, if the Purchaser does not, thereafter, continue to diligently pursue a remedy of the breach, all as the Seller, in its sole and absolute discretion, shall determine, the Seller may either terminate this Agreement, with thirty 30 (thirty) calendar days' prior, written notice, or suspend this Agreement for as long as the breach remains uncured, as Seller, again, in its sole and absolute discretion, shall determine. If this Agreement is suspended, the Purchaser may, at any time before the Seller provides written notice of termination, per Subsection IX(c), below, reinstate this Agreement upon curing the breach, at which time the Agreement shall be deemed reinstated.

- (b) If Purchaser breaches any material provision of this Agreement, Seller may terminate the Agreement, as specified above. If the Seller wishes to terminate this Agreement, without cause, the Seller must provide forty-eight (48) months' prior, written notice to the Purchaser.
- (c) If Purchaser wishes to terminate this Agreement, with or without cause, Purchaser must provide Seller twelve (12) months' prior written notice.

IX. Payment.

- (a) Seller will read the meter at the Metered Point and submit an invoice to the Purchaser for each billing cycle, based on the total amount of water purchased by the Purchaser, as shown by the meter. If the meter fails to function properly during a particular billing cycle, so that an accurate reading of water usage for that billing cycle cannot be made, the Purchaser shall pay, as its total charge for that billing cycle, the average of the total charges per billing cycle that it paid for the three prior billing cycles for which accurate meter readings are available, unless the estimation is adjusted by mutual consent.
- (b) Purchaser shall pay Seller for water at the wholesale rate indicated in the Seller's Water System Policy Resolution, within the timeframe indicated therein. Purchaser shall be subject to all collection procedures, penalties, and remedies for non-payment, including suspension and termination of service indicated in the Seller's Water System Policy Resolution.
- (c) In addition, Purchaser will pay the Seller a "Reserve Capacity Fee" of \$224,000 (Two Hundred Seventeen Thousand Dollars) (except as otherwise provided in final sentence of this subsection) for the 0.35 MGD of capacity that Purchaser, hereby, reserves in the Seller's water system, per Subsections II(a) and (c) and Section V, above. This equates to \$0.64 (sixty-four cents) per gallon, per day, for the 350,000 (Three Hundred Fifty Thousand) gallons, per day, (or 0.35 MGD) of capacity. For the sake of clarity, the Reserve Capacity Fee of \$224,000 is charged one time, not daily. Purchaser may elect to pay the Reserve Capacity Fee in one lump sum at any time after execution of this Agreement, but no later than the date on which the Purchaser commences the use of Seller's water, which date shall, itself, be no later than 48 months following the execution of this Agreement. Alternatively, Purchaser may elect to pay in installments, pursuant to a mutually acceptable payment schedule. If the Purchaser elects to pay in installments, the Purchaser shall pay the Reserve Capacity fee, as periodically amended by the Commission and existing on the date of receipt of the first installment, and the balance owed will accrue interest at the maximum rate

permitted by applicable law. This means that if the Purchaser elects to pay in installments, the Reserve Capacity Fee may be greater than \$224,000.

- (d) Seller agrees to provide seven days' notice of public hearing prior to revising the rates referenced in this Agreement, in accordance with, N.C.G.S. 160A-314(a1)(1).

X. Water Quality.

The point of sale of the water provided herein shall be at the Metered Point. The Seller warrants that all water delivered to the Metered Point shall be potable, chlorinated, and in full compliance with all applicable federal, state, and local laws and regulations. The Seller makes no warranties about, and is not responsible for, any diminution in the quality of the water after it passes through the Metered Point and enters the Purchaser's water system.

XI. Pressure.

The Seller warrants that all water shall be delivered to the Metered Point with a minimum pressure of 20 psi or such other minimum as prescribed by applicable law. The Seller makes no warranty about, and is not responsible for, any reduction in the water's pressure once it passes through the Metered Point and enters the Purchaser's water system.

XII. Booster Pumps.

In the event the Purchaser installs booster pumps for the lines that the Purchaser directly connects to the Metered Point, the Purchaser shall submit plans and specifications for those pumps to the Seller for the Seller's review and approval. The Purchaser shall not install those pumps without Seller's prior, written approval, which shall not be unreasonably withheld. Those pumps will meet the Seller's standard specifications for booster pumps connected to the Seller's water system.

XIII. No Resale to Other Water Systems.

Although Seller acknowledges that Purchaser is purchasing Seller's water for resale to Purchaser's customers, Purchaser, hereby, agrees that it shall not furnish or sell such water to other governmental bodies or water systems, or make interbasin transfers of such water, without the Seller's prior written consent. For purposes of this section, "other water systems" shall mean water systems owned and operated by another government body or private entity that resells water to its own customers.

XIV. Customers.

Unless otherwise agreed by the parties, the owners and occupiers of any properties that receive their water directly or indirectly from the Purchaser's water system (or for which the Purchaser does or could impose a water availability charge or comparable charge because that customer could receive water from the Purchaser's system but does not do so) will be water customers of the Purchaser and not of the Seller. Without the consent of the Purchaser, the Seller shall not extend its water system to any such customers of the Purchaser, otherwise attempt to provide water service to those customers, or penalize those customers

in any way (e.g., by imposing an availability charge on them) for not purchasing their water from the Seller.

XV. Indemnifications.

- (a) By Purchaser: To the extent allowed by law, the Purchaser shall release, defend, indemnify, and hold the Seller harmless from and against any and all claims, costs, damages, liabilities, expenses, actions, and causes of action, whatsoever, including, but not limited to, reasonable attorneys' fees, court costs, other expenses of litigation, and incidental, indirect, consequential, special, exemplary, and punitive damages, to the extent arising out of or, in any way, connected with:
- i. Under the foregoing Article II (d), Seller's failure to supply water during any time period when Seller lacks sufficient water to meet all of its customers' demands because of circumstances beyond Seller's control (which may include, but are not limited to, a drought, but which do not include Seller agreeing to serve new customers when it lacks sufficient water capacity to fully serve both those new customers and Purchaser).
 - ii. Under the foregoing Article IV, any acts or omissions of the Purchaser, in (i) the installation, construction, inspection, operation, maintenance, expansion, repair, reconstruction, rehabilitation, relocation, or replacement of that system or appurtenant devices, or any other activity associated with the system, or (ii) Purchaser's inspection of Seller's meters, or (iii) any defect or flaw in the design, installation, or construction of, or any failure or malfunction of, the Metered Point, meters, backflow prevention devices, booster pumps, supply lines, or other lines or equipment designed, installed/constructed, or provided by the Seller or any of its employees or agents, hereunder, including but not limited to the extension by the Purchaser of Seller's existing line to the County border, the construction by Purchaser of any supply lines and associated equipment, and the installation by Purchaser of any meters or backflow prevention devices.
 - iii. Under the foregoing Article VI, Purchaser's failure to so comply with federal, state, and local laws and regulations.
 - iv. Under the foregoing Article X, any reduction in water quality once it passes through the Metered Point and enters the Purchaser's water system.
 - v. Under the foregoing Article XI, any reduction in the pressure of the water once it passes through the Metered Point and enters the Purchaser's water system.
 - vi. Under the foregoing Article XII, said booster pumps.
 - vii. Under the foregoing Article XIII, the re-sale or other provision of water by Purchaser to any third party.
- (b) By Seller: To the extent allowed by law, the Seller shall release, defend, indemnify, and hold the Purchaser harmless from and against any and all claims, costs, damages, liabilities, expenses, actions, and causes of action, whatsoever, including, but not limited to, reasonable attorneys' fees, court costs, other expenses of litigation, and incidental, indirect, consequential, special, exemplary, and punitive damages, to the extent arising out of or, in any way, connected with:
- i. The Seller's failure to operate its water system in compliance with federal, state, and local laws and regulations as to any water supplied and upstream from the Metered Point.

- ii. The Seller's failure to provide the Purchaser with a maximum flow rate, under the foregoing Article V.
- iii. Any breach of Seller's warranty resulting in diminution in the quality of the water before it passes through the Metered Point, under the foregoing Article X.
- iv. The Seller's failure to deliver water to the Metered Point with a minimum pressure of 20 psi or such other minimum as prescribed by applicable law, under the foregoing Article XI.

XVI. Iran Divestment Act.

The Parties certify that they are not on the North Carolina State Treasurer's list of persons engaging in business activities in Iran, prepared pursuant to NCGS §147-86.58; nor will the Parties utilize, on this Agreement, any contractor or subcontractor on such list.

XVII. Divestment from Companies Boycotting Israel.

The Parties certify that they are not on the North Carolina State Treasurer's list of companies engaged in a boycott of Israel, in violation of NCGS 147-86.80 et. seq., and that they will not utilize on this Agreement any contractor or subcontractor on said list.

XVIII. E-Verify.

The Applicant will comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Furthermore, if the Applicant utilizes a contractor, the Applicant will require the contractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

XIX. Defenses.

The Seller, hereby, reserves any and all defenses available to it at law or in equity, including, but not limited to, the defenses of governmental immunity, contributory negligence, and employees acting outside the scope of employment.

XX. Chlorine Residuals.

If the Purchaser's water system must be flushed to maintain chlorine residuals therein, the Purchaser shall be solely responsible to flush its water system, in order to maintain chlorine residuals therein, and to pay to the Seller the cost of the water required to flush said system.

XXI. Interlocal Cooperation Statute Requirements.

To the extent any portion of this Agreement is authorized by Article 20, Part I of Chapter 160A of the North Carolina General Statutes, the following provisions will apply:

- (a) No joint agency is established by virtue of this Agreement.

- (b) The Purchaser and the City of Winston-Salem, on behalf of the Seller, will be responsible to appoint or employ the personnel necessary to implement their respective obligations, as indicated herein.
- (c) The financing of the undertaking which is the subject of this Agreement, and the apportionment of costs and revenues, will be as indicated herein.
- (d) To the extent any real property is involved in the undertaking, which is the subject of this Agreement, said real property will be held by the party indicated herein (the City of Winston-Salem will hold title on behalf of the Seller with respect to any real property with respect to which the Seller is obligated herein).”

XXII. Capitalized Terms.

Capitalized terms used but not otherwise defined in this Amendment shall have the meanings assigned to them in the Agreement.

XXIII. Remaining Provisions Intact; Conflicts.

Except as expressly modified or amended by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect. In the case of a conflict in meaning between the Agreement and this Amendment, this Amendment shall prevail.

XXIV. Counterparts; Facsimiles and Electronic Signatures.

This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which combined shall constitute one and the same instrument. Facsimile and/or electronic copies of the parties’ signatures shall be valid and treated the same as original signatures.

XXV. Entire Agreement.

This Agreement constitutes the entire agreement and understanding between the parties concerning the subject matter of this Agreement, and it supersedes all other offers, negotiations, representations, and agreements, either written or oral, concerning that subject matter. Any amendment to this Agreement must be in writing, approved by the governing boards of both parties, and executed by both parties.

XXVI. Governing Law and Forum.

This Agreement shall be governed by the laws of the State of North Carolina without regard to North Carolina's choice of law provisions. The sole and exclusive venue for any action pertaining to this Agreement shall be the Forsyth County Superior Court in Forsyth County, North Carolina.

XXVII. Invalidated Provisions Stricken.

If any term of this Agreement is found by a court of competent jurisdiction to be invalid, the invalid term shall be enforced to the greatest extent legally permissible, and the invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

XXVIII. Waiver.

If either party waives or excuses any breach of this Agreement by the other party, that shall not be deemed to waive or excuse any later breach of this Agreement by the other party, nor shall it be deemed a waiver of this section of the Agreement.

XXIX. Assignment.

Neither party may assign its rights or obligations under this Agreement, or sub-contract any part of this Agreement, without written approval from the other party. This Agreement shall be binding on any person or entity acquiring the Seller's water system, and the Seller shall provide the Purchaser with at least thirty (30) days' advance written notice before conveying Seller's water system to any person or entity.

XXX. No Third-Party Beneficiaries.

The Seller and the Purchaser do not intend for this Agreement to grant any rights to any third parties, and this Agreement shall not be deemed to grant any rights to any third parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

{SIGNATURES APPEAR ON THE FOLLOWING PAGE.}

III. Point of Delivery.

The Seller agrees to deliver water to the Purchaser at a metered point ("Metered Point"), which the Seller will install, and which will be located at or near ~~the inside Guilford County, inside~~ the Guilford County line (the border between Forsyth and Guilford Counties, ~~on the Guilford County side~~), ~~and extending the minimum distance required~~ Said location shall be determined by engineering and topographic necessity, subject to the mutual agreement of the parties. The Purchaser may connect one or more water lines to the Metered Point, ~~or running from~~ the Guilford County side of the Metered Point. The meter that the Seller installs at the Metered Point will be sized appropriately to match the size of the lines to which the meter will be connected (as the Seller shall, in its sole and absolute discretion, determine) and the Purchaser will reimburse the Seller, within 30 (thirty) calendar days of the date of invoice, for the cost of the meter, as indicated in the Seller's Water System Policy Resolution or any subsequent amendments thereto. Any replacement or other meters subsequently needed at the Metered Point shall, similarly, be installed by the Seller and paid for by the Purchaser. Seller shall routinely inspect, test, and maintain meter regardless of any suspected irregularities, and Seller shall repair or replace meter if suspected irregularities are confirmed. The Purchaser, hereby, acknowledges and agrees that in the event the Metered Point is located on Purchaser's property in Guilford County, the Seller shall ~~be licensed given a license~~ and have the right to enter the Purchaser's property, with written notice, ~~when practical~~, to Purchaser when practical, to install, inspect, test, maintain, repair, and replace the meters at the Metered Point.

Purchaser shall promptly report to Seller any malfunction or other problem that Purchaser detects in a meter at the Metered Point.

IV. Water Lines and Backflow Prevention Devices.

- (c) As demand from the Town of Oak Ridge increases, additional supply lines from the Seller's existing distribution system to the Metered Point may be required. Seller may elect to design and construct the additional supply lines or to require that Purchaser do so, at Purchaser's sole cost and expense. Purchaser will acquire in the name of the City of Winston-Salem and pay all the costs to acquire any and all real property interests necessary, if any, to construct the additional supply lines, whether they are constructed by Seller or Purchaser. The real property must be deeded to the City of Winston-Salem at least thirty (30) days before a contract for construction is awarded. If Seller designs and constructs the additional supply lines, then Purchaser shall reimburse Seller the amounts of the winning design proposal and construction bid, at least 30 (thirty) calendar days prior to the award of the contracts for each. Both parties, however, acknowledge that any such advance is an estimated cost, and subject to adjustment. Final billing shall be based upon, and Purchaser shall pay to Seller, Seller's actual cost for design and construction. If the amount Purchaser shall have already paid is less than Seller's actual cost, then Purchaser shall remit to Seller reimbursement for the additional cost within sixty (60) days after the date of an invoice from Seller to Purchaser therefor. If Purchaser does not pay said invoice

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Commented [A1]: Made this edit so that if you acquire the property interests in Forsyth Co. to construct additional supply lines from our existing distribution system to the Metered Point, you can have them deeded straight to us, and, hopefully, not have to acquire the Forsyth Co. Board of Commissioners' approval for the acquisition (you wouldn't be acquiring the property interest, just brokering the acquisition for us).

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within sixty (60) days of the date of invoice, then Seller shall charge a late payment penalty and interest, at the maximum amount authorized by applicable law, on any unpaid balance due. Once Seller completes construction of the supply lines, Seller will return to Purchaser any overpayment by Purchaser.

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