

**AGREEMENT OF CITY OF NORTHWEST TO CONVEY WATER AND SEWER
SYSTEMS TO BRUNSWICK COUNTY**

THIS AGREEMENT TO CONVEY WATER AND SEWER SYSTEMS, dated this the 21st day of October 2019, by and between the COUNTY OF BRUNSWICK, a political subdivision and body politic of the State of North Carolina of the State of North Carolina (hereafter the "County"), and the CITY OF NORTHWEST, a municipal corporation of the State of North Carolina (hereafter the "City");

WITNESSETH:

WHEREAS, the City owns and operates a public water distribution system and sanitary sewer collection system with approximately \$7.1 million of capital assets consisting of approximately 12.6 miles of distribution water mains, together with fire hydrants, valves, service lines, customer meters, land, easements, rights-of-way, and a wastewater collection system with approximately 15.3 miles of vacuum mains, gravity mains, low pressure and high pressure force mains, together with manholes, vacuum pits, low pressure grinder pumps, a main lift station at 4479 Sawmill Road (Parcel #0150006502), valves, air release valves, service taps, service laterals, clean-outs, and related facilities (all hereinafter collectively referred to as the "City Water and Sewer System"); and

WHEREAS, the City has approximately 301 water customers and 267 sewer customers; and

WHEREAS, the City has approximately \$170,000 in operating reserves and customer deposits, and \$31,500 in customer receivables; and

WHEREAS, the City has debt associated with the City Sewer System of approximately \$1 million; and

WHEREAS, the City holds a Permit to Operate a Community Public Water System, PWS ID NC7010045; and

WHEREAS, the City holds a Permit to Operate Collection System, WQCS0530; and

WHEREAS, with regard to its utility's services, the City currently has one employee; and

WHEREAS, the City currently purchases its finished water from Brunswick County ("County"), the source of which is the Cape Fear River ("River");

WHEREAS, the City desires to keep the water and sewer rates as low as possible for its residents and property owners, but because of the water and sewer system size, the maintenance and expansion needs, and the number of customers it serves, a larger utility may have the ability to keep the rates more affordable in the long term; and

WHEREAS, the County currently operates and maintains water distribution systems and wastewater collection systems throughout the Brunswick County area; and

WHEREAS, the County has the staff, equipment, expertise, and financial ability to assume operation and maintenance of the City's water and sewer systems; and

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

WHEREAS, North Carolina General Statutes 160A, Article 20, Interlocal Cooperation, authorizes and empowers any units of local government to enter into interlocal agreements for the ownership, construction, operation, maintenance, management, and financing of all or portions of water and sewer utility systems within or outside the corporate limits of those units of local government.

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

1. WATER DISTRIBUTION AND WASTEWATER COLLECTION SYSTEM DESCRIPTION

In addition to any components previously described, the City's water distribution system shall include all water mains, water service, meter assemblies, valves, fire hydrants, and other appurtenances required to provide water service to existing and future water customers in the City.

In addition to any components previously described, the City's wastewater collection system shall include all sewer pump stations, vacuum station, manholes, vacuum assisted gravity sewer mains, gravity sewer mains, low pressure sewer mains, force mains, and other appurtenances required to provide sewer service to existing and future sewer customers of the City.

The City also agrees to transfer to the County all retained earnings associated with the Water and Sewer Enterprise Fund.

A comprehensive list of the real estate, equipment, other assets and liabilities which comprise the systems being conveyed are attached hereto in Exhibit A.

2. TRANSFER OF THE WATER AND SEWER SYSTEMS

The City agrees to transfer to the County the City's water and sewer systems as described above as of January 1, 2020. Transfer shall be by execution of deed and dedication documents prepared by the County's Attorney and executed by the

appropriate City representatives, in addition to any other documentation, agreements or bills of sale necessary to complete the transfer. Upon execution of the deed and dedication documents, the County shall own, operate, and maintain the water and sewer systems within the City. The current City water and sewer customers and future water and sewer customers will become customers of the County.

At Closing, at a time and place mutually acceptable to the parties, the City shall convey to the County, free and clear of liens and encumbrances, the Water and Sewer Systems by delivering Warranty Deeds for the City's real property and an Assignment and Bill of Sale for the City's personal property including, *inter alia*, the Systems' infrastructure, facilities, structures, vehicles, equipment, supplies, funds, permits, contracts, easements, other property rights, liabilities, debt obligations, and all other materials and things associated with or required for the ownership, operation, and maintenance of the Water and Sewer Systems. The City will not transfer the truck and storage building used for utility operations.

The County agrees to offer the one employee a full-time benefit earning position with the county subject to the normal county pre-employment screening.

All accounts payable of the utility system will be paid by the city no later than December 31, 2019.

A complete listing of customer receivable and deposits will be provided to the county as of December 31, 2019 after which date the county will be responsible for collection of receivable balances.

A final accounting of utility fund cash will be provided to the county along with payment in full of the utility fund cash balance no later than January 31, 2020.

The county agrees that the 59 vacant lot property owners listed on attachment B that paid the city availability fees for water and sewer and the 56 property owners listed on attached C that paid the city availability fees for sewer and received a commitment from the city that they would not have to pay system development fees will not be required to pay a system development fee to Brunswick County at the time of connection as long as they connect to the system no later than January 1, 2030. Those property owners must be current and in good standing with the city for all fees billed and amounts owed as of January 1, 2020.

The county agrees that the city will no longer be responsible for sewer service capacity fees under its sewer service agreement with Brunswick County and the agreement will be deemed terminated by mutual consent upon transfer of the utility system to the county.

The City agrees to execute any NC DENR forms or applications required to transfer or assign any necessary permits for the operation and maintenance of the water and sewer systems to the County.

3. EASEMENTS AND RIGHTS-OF-WAY

The City agrees to transfer all easements and fee simple property related to the water and sewer systems to the County. The City also gives the County the right to operate, maintain, and construct new water and sewer mains within the rights-of-way owned by the City or deeded to the City by developers. Any new easement required to expand the water and sewer systems would be the responsibility of the County.

4. SYSTEM IMPROVEMENTS

The County agrees to make such improvements as required to integrate the City of Northwest water and sewer systems into the overall County water and sewer systems. The County will be responsible for the cost of the improvements. County agrees to operate, maintain and expand said water and sewer systems to accommodate planned growth and development within City's planning and zoning jurisdiction in accordance with County utility system policies, standards, and procedures, and to serve present and future demands in a manner so as not to impede the orderly growth and development of City.

5. EXISTING WATER AND SEWER SYSTEM DEBT AND OBLIGATIONS

The County agrees to assume responsibility for the following existing debt associated with the water and sewer systems:

- a. USDA General Obligation Water Bonds due in varying annual installments though June 2041; interest at 4.75% with current balance of \$528,000
- b. NC Clean Water Loan and Grant Program DEQ Sewer Loan due in varying annual installments though June 2030; with current balance of \$517,569.25

6. WATER AND SEWER RATES

The water and sewer customers in the City will pay the same water rates and fees as currently in effect for similarly situated customers of the County. The City agrees to transfer all meter deposits held on behalf of their customers to the County.

7. ORDINANCES AND PERMITS

The City agrees to maintain in effect ordinances regulating water and sewer connections and the use of the water and sewer systems to include mandatory connection to the water and sewer systems for all structures developed within the corporate limits of the City. The City's sewer use ordinance must conform to the

County's current ordinance and the NC DENR minimum requirements.

8. FUTURE EXPANSION OF WATER DISTRIBUTION AND SEWER COLLECTION SYSTEMS

It is understood and agreed that all future expansions to the water distribution and sewer collection systems within the corporate limits of the City subsequent to the execution of this Agreement whether constructed by the City or private developers shall be constructed in accordance with County specifications and shall be dedicated to the County upon completion of construction. The County agrees to solicit input from the City on current and future water and sewer needs of the City on at least an annual basis.

9. GRANT OF EXCLUSIVE RIGHT TO THE COUNTY

The City, subject to the terms and provisions of this Agreement hereby grants and gives the County the exclusive right to own, maintain, and operate the sewer collection and water distribution systems within the City.

10. NO ORAL MODIFICATIONS

Any change or modification of this Agreement must be in writing signed by both parties.

11. TERM AND TERMINATION OF AGREEMENT

This Agreement shall be perpetual. City and County 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 sixty (60) years. If the term of this agreement is so limited to sixty (60) 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.

The County does not intend to transfer the systems to a third party. If a future Board of Commissioners should desire otherwise, then the County agrees that City shall have the option, for a 90 day period following notification by the County, to reach an agreement with the County to reacquire the systems upon mutually agreeable terms.

12. CITY REPRESENTATIONS AND WARRANTIES

The City hereby represents and warrants as follows:

A. Except as otherwise disclosed herein, the City has good and marketable title, free and clear of liens and encumbrances, to the real and personal property being conveyed to the County, including all permits, associated with every aspect of the Water and Sewer Systems.

B. The Water and Sewer Systems are in good condition and repair, normal wear and tear excepted, and are in compliance with all laws, rules, and regulations of applicable governmental units.

C. The City shall provide the County with true, accurate, and complete copies of the following: the City's rates and fees for water and sewer service; all ordinances, resolutions, and/or rules and regulations relating to the Water and Sewer Systems, all which remain in full force and effect, and all other plans, specifications, and operation/maintenance manuals for the Water and Sewer Systems.

D. The City shall provide the County with true, accurate, and complete copies of each permit and contract associated with the Water and Sewer Systems under which the City is obligated to perform together with written evidence showing that the permits have been transferred to the County and that the other parties to the contracts, whenever required, have consented to assigning the contracts to the County.

E. The City has the power and authority to assign the permits, contracts, liabilities, and debt obligations associated with the Water and Sewer Systems to the County, no events of default have occurred or are occurring thereunder, the permits, contracts, liabilities, and debt obligations remain in full force and effect, and are enforceable in accordance with their respective terms and conditions.

F. This Agreement, and all other documents and instruments related hereto and/or required hereby, has/have been duly authorized, executed, and delivered by the City and constitutes valid and binding obligations by the City enforceable in accordance with its terms and conditions subject to bankruptcy, insolvency, or other laws affecting the enforcement of creditor's rights.

G. The City'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 agreements to which the City 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 City for the ownership, operation, and maintenance of the Water and Sewer Systems.

H. The execution and delivery of this Agreement and the conveyance of the City's Water and Sewer Systems to the County do not require the approval of

any regulatory body, governmental unit or agency, or any other persons/entities whatsoever.

I. All permits held by the City regarding the ownership, operation, and maintenance of its Water and Sewer Systems are in full force and effect, have been duly complied with in all material respects, and are assignable and transferable to the County.

J. All easements held by the City with regard to its Water and Sewer Systems are assignable by the City without the consent of third parties.

K. If deemed necessary by the County, the City will adopt ordinances such as, but not limited to, a sanitary use ordinance, backflow prevention ordinance, grease trap ordinance, right of entry ordinance, and other ordinances that are reasonably necessary to regulate the proper use of, and provide for the proper billing and collection of bills for, the subject water and sewer system and any extensions thereof by the customers and users within the jurisdiction of City.

13. COUNTY REPRESENTATIONS AND WARRANTIES

The County 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 County and constitute valid, binding, and enforceable obligations by the County.

B. The County'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 agreements to which the County 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 County will perform the services customarily performed by water and sewer utility systems with respect to the acquired systems and customers, such as:

1. Read all meters of, send all bills to, and collect all payments from the Water and Sewer Systems' customers.

2. Administer the provision of water and sewer services to new customers and coordinate the construction of related infrastructure by developers intending to connect to the Water and/or Sewer Systems.

3. Maintain, repair, and improve the systems in a timely manner and operate and manage the systems 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.

4. Operate, maintain, and manage the water and sewer system with employees who have the operational expertise and professional credentials necessary to perform their respective duties, and perform the administrative and managerial duties required for the operation of public enterprise water and sewer systems.

14. COOPERATION OF THE PARTIES

The City and the County 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 parties further agree to provide to each other, if requested, all plans, as built drawings, financial information, and all other information, documents, materials, and other things in their possession or control associated with the Water and Sewer Systems, and the performance of the terms and conditions set forth herein.

15. 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.

16. 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.

17. AUTHORIZATION

Each party certifies that all appropriate steps to legally enter into this Agreement have been taken, that the matter has been approved by the appropriate legislative body, and that the terms of this Agreement are understood. Moreover, each party

certifies that all laws, rules, and regulations as well as any local governmental rules were followed with regard to acceptance of this Agreement and that this Agreement meets all standards for governmental agreements.

18. 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.

19. CHOICE OF LAW

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

20. SEVERABILITY

It is hereby the declared intention of City and County that 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.

21. WARRANTIES

The County and City represent and warrant that each has full power and authority to enter into and perform any and all provisions of this Agreement between the County and the City.

22. 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. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

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:

THE COUNTY OF BRUNSWICK

Clerk

(SEAL)

By: _____
Frank L. Williams, Chairman

ATTEST:

CITY OF NORTHWEST

City Clerk
(SEAL)

By: _____
, Mayor

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

Julie Miller, Director of Fiscal Operations
Brunswick County

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

Finance Director
City of Northwest