

RAW WATER SUPPLY AGREEMENT FOR IRRIGATION

THIS RAW WATER SUPPLY AGREEMENT FOR IRRIGATION (the “Agreement”), dated as of the ____ day of _____, 2022 by and between the COUNTY OF BRUNSWICK, a political subdivision of the State of North Carolina (the “County”), and IRRIGATION, LLC, a limited liability company organized and existing under the laws of the State of North Carolina (the “Customer”) is made pursuant to North Carolina General Statutes, Article 15 of Chapter 153A, and in consideration of the promises made to one another in this Agreement, as follows:

WHEREAS, Customer desires to obtain an adequate and dependable raw water supply from County for irrigation purposes; and

WHEREAS, County owns and operates a raw water system with a capacity currently capable of serving the present customers of County’s system and the estimated number of water users to be served by Customer; and

WHEREAS, Customer owns and operates residential irrigation infrastructure within the Compass Pointe subdivision in Brunswick County; and

WHEREAS, Customer acknowledges and understands that this Agreement establishes a minimum amount of raw water that Customer is obligated to pay for, and a maximum amount of raw water that County is required to deliver to Customer; and

WHEREAS, Customer acknowledges and understands that County determines the rates to be paid by Customer; and

WHEREAS, Customer is not compelled to purchase water from County and is voluntarily entering into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, County agrees to furnish water, and Customer agrees to pay for water, upon the terms and conditions and for the consideration hereinafter set forth, to wit:

SECTION 1

DEFINITION OF TERMS

1.1 Definitions. The following terms and expressions as used in this Agreement, unless the context clearly shows otherwise, shall have the following meanings:

(a) “Monthly Minimum” means the minimum amount of raw water Customer must compensate County for during the Agreement period, regardless of whether Customer actually takes such quantity of water.

(b) “Agreement Date” means the effective date of this Agreement as executed by both parties.

(c) “Customer” means Irrigation, LLC, as defined in the preamble to this Agreement.

(d) “Daily Average” means 1/365 of the Annual Minimum provided at the Point of Delivery.

(e) “Point of Delivery” means the air gap between the provision of service by County to Customer, all facilities upstream of which shall be the sole responsibility of County, and all facilities downstream of which shall be the sole responsibility of Customer.

(f) “Raw Water” means surface water or groundwater that because of bacteriological quality, chemical quality, turbidity, color, or mineral content makes it unsatisfactory as a source for a community water system without treatment.

(g) “System” means, collectively, the existing system and the future improvements and water of County included as part of the System for projects, raw water storage, transmission and supply.

SECTION 2

RAW WATER SUPPLY

2.1 Minimum Take-or-Pay Quantity. County agrees to sell to Customer and Customer agrees to purchase from County at the Point of Delivery defined herein, and Customer agrees to purchase and take at said Point of Delivery, raw water in an

amount not less than 500,000 gallons per month, provided at the Rate of Delivery and pressure stated below. Customer agrees to make the Minimum Monthly Payments calculated as set forth in Section 3 as consideration for such distribution and provision of raw water and County's operation and maintenance of its Regional Water System Facilities during the term of this Agreement. The Minimum Quantity is based upon sixty percent (60%) of Customer estimated monthly usage. The Minimum Monthly Payments represent monthly installment fees paid in a take-or-pay arrangement over the course of the Agreement period.

2.2 Quality. County agrees to furnish Customer, at the Point of Delivery defined herein, raw water, meaning that the water is not potable and has been screened, only in the manner required for raw water intakes and conduits.

2.3 Point of Delivery. The Point of Delivery for Customer shall be at a site determined by County, taking into account Customer recommendations. Customer agrees to furnish the site at the Point of Delivery and to design and construct a separate vault, or meter box, for the Point of Delivery. The vault will include an AMI / Sensus compatible meter and control valve. Isolation valves shall be installed at the tap to County's existing transmission main and at the vault/meter box to facilitate removal of the meter. County may require Customer to bear all costs associated with such installation. Customer must submit plans for review and approval by County prior to construction. Material specifications shall be equivalent to those used for Brunswick County drinking water specifications. Once constructed, County shall own the constructed facilities from the tap to the existing County raw water main through the vault / meter box inclusive of the meter and isolation valves.

2.4. Maximum Instantaneous Demand. The maximum instantaneous demand shall not exceed either the maximum instantaneous demand capacity of the meter according to the manufacturer's meter specifications or 1,041 gpm, whichever is less.

2.5 Daily Demand. The maximum daily demand shall not exceed 500,000 gallons per day.

2.6 Water Pressure. County raw water supply system pressure is dependent on the raw water pressure supplied to County through the Lower Cape Fear Water and Sewer Authority ("LCFWSA") raw water system. Customer recognizes that water pressure may vary widely and acknowledges that County is not responsible for said variation. If Customer requires a greater pressure than that which meets the standard requirements, then Customer shall bear the cost of providing such greater pressure. Emergency failures of pressure or supply due to line breaks, power failure, flood, fire and use of water to fight fire, earthquake, hurricane, or other catastrophe shall excuse County from this provision for such reasonable period of time as may be necessary to effectuate repairs and restore service.

2.7 Metering Equipment. Customer shall furnish, design, construct, and install at its own expense at, or near, the Point of Delivery the necessary rate of flow equipment, compatible with AMI / Sensus technology of a type approved by County, for measuring properly in both low and high flow periods the quantity of raw water delivered under this Agreement, and such billing meter and other equipment so installed shall become the property of County. The reading, calibration, and adjustment of all metering equipment and appurtenances shall be accomplished only by the employees or agents of County.

2.8 Non-Exclusive Supply. Nothing herein shall be construed as requiring Customer to utilize County as the sole source of its raw water.

SECTION 3

PAYMENT AND BILLING

3.1 Usage Rate. The rate charged for usage (cost per 1,000 gallons) shall be 125% of the raw water rate charged to County by LCFWSA for minimum usage volume of 500,000 gallons per month.

3.2 Service Charge. The base service charge shall be the latest published potable water Retail Meter Base Service charge. If, due to meter size, there is not a retail meter base service charge for the meter in use, then the Wholesale Meter Base

Service charge shall be used. If LCFWSA adds a comparable base fee to what it charges County, then County may likewise adjust its base fee to Customer.

3.3 Billing. On a monthly basis, County shall bill Customer for water delivered through its master meters. The bills shall be payable within thirty (30) days of the date of the invoice.

SECTION 4

TERM, TERMINATION, AND RENEWAL OF AGREEMENT

4.1 This Raw Water Supply Agreement shall be in full force and effect for a period ending June 30, 2037.

4.2 The parties acknowledge that the water use contemplated by this Agreement is not for drinking water and, therefore, is a non-essential use that County may unilaterally suspend or terminate based on limited raw water supply. Customer agrees not to supply raw water to a third party for drinking water or as a source of raw water to make drinking water.

4.3 This Agreement may otherwise be terminated only by mutual agreement of the parties. A mutually agreeable termination of this Agreement will be on such terms as the parties may agree at the time in question. Each party hereto reserves to itself all legal rights and remedies available at law or in equity in the event of any other breach of this Agreement by the other. So long as Customer is the only customer served by the piping system installed by the developer, the cost of any needed repairs to the trenchless piping system within the railroad right-of-way shall be the responsibility of the developer. In the absence of repair payment from developer, County may isolate the portion of the raw water system supplying the developer and discontinue monthly charges for service.

4.4 This Agreement may be renewed or amended by mutual written agreement of the parties, adopted with the same formality as the original.

SECTION 5

REPRESENTATIONS AND COVENANTS

5.1 Each party to this Agreement represents to the other party each of the following as of the effective date of this Agreement, and covenants with the other party that each such representation will remain true and correct:

5.1.1 It has full power and authority to enter into this Agreement, and to enter into and carry out the transactions contemplated by this Agreement.

5.1.2 It has by proper action authorized the execution and delivery of this Agreement and is not in default under any provisions of this Agreement.

5.1.3 The execution, delivery, and performance of this Agreement does not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any material Agreement to which it is a party or by which any of its assets are bound or affected, or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it.

5.1.4 This Agreement constitutes a legal, valid and binding obligation enforceable at law and in equity in accordance with its terms and, to the extent that certain remedies under this Agreement require or may require enforcement by a court, such principles of equity as the court having jurisdiction may impose.

5.1.5 It will comply with all applicable federal, state and local laws with respect to any activities conducted under or pursuant to this Agreement.

5.1.6 No elected or appointed official or employee has any interest (financial, employment, or other) in the transactions contemplated by this Agreement.

5.1.7 It will take no act (or engage in any failure to act) that will prevent, delay, obstruct, frustrate, or otherwise impair or undermine the activities conducted under or pursuant to this Agreement, except as may be

necessary to enforce this Agreement or ensure compliance with applicable laws, regulations, and ordinances.

SECTION 6

MISCELLANEOUS PROVISIONS

6.1 Exhibits. All exhibits, if any, referenced in this Agreement are incorporated herein by reference as integral parts of this Agreement.

6.2 Amendment to Agreement. This Agreement may be modified or amended only by written amendments that are approved and signed on behalf of both parties in the same manner as original adoption.

6.3 No Assignment Without Consent. Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

6.4 Governing Law and Venue. This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

6.5 Dispute Resolution. Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

6.6 Governmental Immunity. County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains

all immunities and defenses provided by law with regard to any action based on this Agreement.

6.7 Non-Waiver. Failure by County at any time to require the performance by Customer of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

6.8 No Third-Party Beneficiaries. Nothing in this Agreement shall give any person other than the parties any rights to enforce any provision of this Agreement. There are no intended third-party beneficiaries of this Agreement.

6.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

6.10 Headings. The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

6.11 Severability. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

6.12 Notices.

(a) Delivery Of Notices. Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be

delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.

(b) Effective Date Of Notices. Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

(c) Notice Address. Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

i. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

ii. For the Customer: Irrigation, LLC
115 North Third Street, Suite 300
Wilmington, NC 28401-4086

6.13 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 § 66-58.1 *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.

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

IRRIGATION, LLC

By: _____

Printed Name: _____

Title: _____

Date: _____

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

Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina
APPROVED AS TO FORM

Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney