PWC Resolution # PWC2024.12

RESOLUTION APPROVING
INTERIM WHOLESALE WATER AGREEMENT

WHEREAS, PWC has agreed to sell, and the County of Hoke, North Carolina ("Hoke County") has agreed to purchase from PWC, pursuant to a written Interim Wholesale Water Agreement by and between PWC and Hoke County (the "Agreement"), certain quantities of wholesale water for a period of two years, such term to automatically renew for successive one-year terms, subject to certain termination rights of the parties.

NOW, THEREFORE, BE IT RESOLVED that the Commission hereby approves the Agreement and authorizes CEO/General Manager Timothy Bryant to execute and deliver the Agreement on behalf of PWC.

ADOPTED this 10th day of July, 2024.

FAYETTEVILLE PUBLIC WORKS COMMISSION

Donald L. Porter, Chair

ATTEST:

Ronna Rowe Garrett, Secretary

STATE OF NORTH CAROLINA
CUMBERLAND COUNTY

INTERIM WHOLESALE WATER AGREEMENT

This Interim Wholesale Water Agreement ("Agreement") is entered into as of the Effective Date by and between Fayetteville Public Works Commission ("PWC"), a public authority, and County of Hoke, North Carolina ("County") (PWC and County are individually each a "Party" and collectively are the "Parties"). The Parties hereby agree as follows:

1. Wholesale Water Sales and Purchases. PWC agrees to sell to the County and deliver at the Points of Delivery, and County agrees to purchase and take at the Points of Delivery, wholesale water within the Range on the terms and conditions set forth in this Agreement.

2. Definitions. As used in this Agreement, capitalized terms shall have the respective meanings set forth below unless defined elsewhere in the Agreement:

"Maximum Daily Usage" means the maximum amount of wholesale water that County is permitted to purchase from PWC in any twenty-four (24) hour period during the Term, shall not exceed an average of three million (3,000,000) gallons per day.

"Effective Date" shall mean the last date on which this Agreement is executed by the Parties.

"Emergency Condition" means a condition that threatens the public health, safety, or welfare.

"Force Majeure" shall mean an event that is not anticipated, and which is not within the reasonable control of either Party after the exercise of commercially reasonable efforts or attributable to the fault or negligence of either Party, and which by the exercise of due diligence a Party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor. Force Majeure includes, but is not restricted to: acts of God; fire; explosion; civil disorder or disturbance; sabotage; acts of terrorism; insurrection; riot; pandemic; PWC's inability to generate or deliver electricity or clean water due to an outage or break that is not attributable to, or the fault of, PWC; action or restraint by court order or public or government authority or applicable law, so long as PWC has not applied for or assisted in the application for such government action; and any major equipment outage of PWC or its supplier(s).

"Month" or "Monthly" (being capitalized or lowercase) means the intervals transpiring between the previous meter reading date and the current meter reading date.

"Monthly Maximum Usage" means the maximum amount of wholesale water that the County is permitted to purchase from PWC each Month during the Term, being forty two million gallons (42,000,000) as of the Effective Date of this Agreement; provided, however, that the County may increase the Monthly Maximum Usage up to fifty-one million (51,000,000) gallons per Month as set forth in Section 7 of this Agreement.

"Monthly Minimum Usage" means, subject to the Daily Maximum Usage, the minimum amount of wholesale water that the County is required to purchase from PWC each Month during the Term, being four million gallons (4,000,000).

"Points of Delivery" means the point(s) at which title to water sold by PWC to the County shall transfer to the County. The following are the Points of Delivery for wholesale water sold to the County:

- The PWC meter, located on US 401 (Raeford Road) at or near the Cumberland/Hoke County line.
- The PWC meter, located on Gillis Hill Road at or near the Cumberland/Hoke County line.

"Range" means an amount between the Monthly Minimum Usage and the Monthly Maximum Usage; provided, however, during the implementation of water conservation measures pursuant to this Agreement, PWC may at its discretion temporarily suspend, reduce, or modify the Range.

"System" means, collectively, the water storage, treatment, transmission, distribution, and supply components comprising an entity's potable water infrastructure.

3. Term and Termination. The initial term of the Agreement shall be two (2) years from the Effective Date, and thereafter the Agreement shall renew automatically for successive terms of one (1) year; provided, however; (i) either Party may terminate this Agreement, effective at the end of the initial term or any renewal period, by providing at least ninety (90) days prior written notice to the other Party before the end of the initial term or any applicable renewal period; (ii) the Agreement may be terminated prior to the end of the initial term or any renewal period by PWC upon sixty (60) days prior written notice to the County if PWC publishes a tariff or provides a standardized offering for the sale of wholesale water (the "Wholesale Water Tariff"); or (iii) either Party otherwise may terminate this Agreement in accordance with its terms. County acknowledges that PWC is developing a Wholesale Water Tariff to establish uniform terms and conditions that will govern its sale of wholesale water. In the event that this Agreement is terminated pursuant to the foregoing subsection (iii), the County shall be placed automatically on the Wholesale Water Tariff, unless County elects otherwise, eliminating the possibility of any disruption in the delivery of wholesale water to County.

4. Default. In addition to the rights of termination provided to PWC under Section 3 and other provisions of this Agreement, PWC may suspend the furnishing of wholesale water to the County in the event of a default by the County. Notwithstanding the foregoing, PWC may immediately suspend the furnishing of wholesale water to the County to prevent harm to the County or to PWC's System or due to an Emergency Condition.

An "event of default" under this Agreement includes, but is not limited to, the following:

a. Failure by the County to pay when due all its monetary obligations under this Agreement after the expiration of ten (10) days written notice to the County:
b. Any other breach by the County of this Agreement after the expiration of thirty (30) days written notice to the County;

c. Fraudulent or unauthorized use or consumption of water from PWC or use in such manner as to circumvent PWC's meter or cause Meter Error or tampering with PWC equipment;
d. Failure to implement and enforce the Water Shortage Response Ordinance of the City of Fayetteville when applicable;
e. The County's failure to purchase water within the Range during any calendar month;
f. Two (2) or more exceedances by the County of the Monthly Maximum Usage during any continuous six (6) month period for which this Agreement is in full force and effect unless otherwise agreed to in writing by PWC; or
g. Two (2) or more exceedances by the County of the Daily Maximum Usage during any thirty (30) day period for which this Agreement is in full force and effect unless otherwise agreed to in writing by PWC.

5. Remedies. If this Agreement is terminated due to an event of default, or other termination of this Agreement upon any authorized grounds, any resulting suspension of the furnishing of wholesale water to the County by PWC shall not relieve the County of its liability for: (1) the payment of wholesale water supplied from PWC to the County as of the date of suspension or termination of this Agreement, and (2) the actual damages sustained by PWC.

6. Amount of Water, Rates, and Charges.

The County's Monthly purchases of water under this Agreement beginning from the Effective Date shall be within the Range and subject to the terms and conditions of PWC's rate schedule applicable to wholesale water service in effect at the time water is delivered to the County (the "Rate"), and the County shall be charged by PWC and pay to PWC the "Usage Charge with no O&M" per gallon of water delivered by PWC to the Points of Delivery, which charges are subject to modification by PWC from time to time in accordance with PWC's statutory ratemaking authority and this Agreement. Although the County is not required to take the Minimum Monthly Usage, under no circumstances shall the County pay for less than the Monthly Minimum Usage multiplied by the Rate during any month for which this Agreement is in effect.

In the event the County's purchase of water under this Agreement in any Month, exceeds fifty-one million (51,000,000) gallons, the cost to the County shall be two and a half (2½) times the then current Rate per gallon.

7. Increase Monthly Maximum Usage. The County will be obligated to pay the then-current fees and charges as set forth in PWC's applicable rate schedules, as well an additional Utility Capacity Charge (UCC) in three million (3,000,000) gallon increments for added capacity, once the Monthly purchase of water under this agreement exceeds forty two million (42,000,000) gallons up to the Maximum Daily Usage of fifty-one million (51,000,000) gallons.

8. Operation and Maintenance by the County. The County has designed and constructed the facilities necessary to connect the County's System to PWC's System at the Points of Delivery. The County owns and operates the System on the County's side of the meter at each Point of Delivery. The County shall be responsible for operating and maintaining in good working condition at all times the County's System on the County's side of each Point of Delivery and all necessary facilities for the delivery of water under this Agreement. Any issues that result in waste or loss of water after delivery and on the County's side of any Point of

Delivery shall not entitle the County to any adjustment or reduction in bills or water delivered under this Agreement. PWC will deliver water to the Points of Delivery at pressures as required by the North Carolina Department of Environmental Quality. Any additional Point of Delivery shall be requested in writing by the County to PWC and PWC shall have sole discretion to determine whether to approve such proposed Point of Delivery.

9. Water Quality and Warranty. PWC shall furnish water to the County at the Points of Delivery that shall at all times meet the standards for safe drinking water adopted by the State of North Carolina Department of Environmental Quality. The County understands and acknowledges that there are times on all water supply distribution systems, including PWC's, when customers experience discolored water due to breaks in the line, construction, fires or regular flushing activities to keep the lines viable, failure of lines due to age or condition, problems within the customer's own service lines, and other causes not within the control of PWC. PWC shall engage in commercially reasonable efforts to maintain its facilities on PWC's side of the Points of Delivery necessary to deliver water to the County in a regular and orderly manner, but PWC is not responsible for or obligated to undertake major infrastructure renovations to its system that would increase the cost of its services to its consumers in order to improve water delivery to the County under this Agreement. The County further understands and acknowledges that all drinking water, including bottled water, may reasonably be expected to contain at least a small amount of contaminants, and the presence of contaminants does not per se indicate that the water poses a health risk, although immunocompromised consumers should seek advice from their health care providers about drinking PWC's water.

PWC WARRANTS ONLY THAT ITS WATER MEETS EPA ENFORCEABLE STANDARDS UNDER THE SAFE DRINKING WATER ACT. PWC DOES NOT WARRANT OR REPRESENT THAT IT'S WATER IS FIT FOR ANY OTHER PURPOSE.

PWC EXPLICITLY EXCLUDES ANY WARRANTY UNDER THE UNIFORM COMMERCIAL CODE INCLUDING, BUT NOT LIMITED TO, AN IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR AN IMPLIED WARRANTY FOR MERCHANTABILITY. PWC FURTHER DISCLAIMS ALL OTHER WARRANTIES UNDER ARTICLE 2 OF CHAPTER 25 OF THE NORTH CAROLINA GENERAL STATUTES, CONSISTENT WITH N.C.G.S. 130A-315(G) OF THE NORTH CAROLINA DRINKING WATER ACT.

PWC shall not be responsible for the water supply quality beyond the Points of Delivery. The County and any of its customers who use PWC water for purposes other than drinking do so at their own risk, and PWC will not be responsible or liable for water that is used for any purpose other than drinking water. Any consumer using PWC water for any purpose other than drinking water must provide its own filtration and/or treatment of the water in order to assure that it meets the specific needs and quality standards that are necessary for the consumer's particular usage.

10. Metering Equipment. PWC shall own, operate, and maintain at each Point of Delivery all necessary meter(s) and associated equipment for accurately measuring the quantity of water delivered to the County. PWC agrees to calibrate such meter(s) at the manufacturer's recommended intervals or when either Party reasonably believes that a Meter Error has occurred. "Meter Error" means the failure of the PWC meter to register or measure accurately, within the then-applicable standards set by AWWA for water meters, the amount of water supplied to the County. If any Meter Error is discovered, PWC will credit or charge, as appropriate, the County the difference between the amount previously billed and the estimated usage or consumption amount for a period of up to twelve (12) months immediately preceding confirmation of the Meter Error. The County shall pay PWC the full costs of the testing fees for

each water meter tested at the County's request when the meter accuracy falls within limits established by AWWA. Notwithstanding anything to the contrary herein, PWC shall install at the County's expense, a governing meter which shall limit the amount of water available to the County pursuant to the terms of this Agreement.

11. Monthly Billing. PWC shall bill the County on a monthly basis for the quantity of water delivered by PWC to the County at the Points of Delivery for the immediately preceding month. PWC will read the applicable meter(s), as nearly as practicable, at regular intervals of not less than 25 days and not more than 35 days. If PWC is unable to read the meter(s) for any reason, PWC may estimate the amount of water delivered by PWC to the County based on preceding monthly billing periods for which reading were obtained at each Point of Delivery, and such estimates shall have equal validity as actual meter readings.

12. Payment. Monthly bills are due when rendered but may be paid by the County to PWC within the payment period specified on the bill without incurring a late fee or accruing interest charges (unless otherwise specified in the applicable rate schedule); provided, however, that if the date on which a late fee will be assessed is a weekend or Holiday, such date will be extended to the next day which is not a Saturday, Sunday, or a Holiday. If any bill is not so paid, PWC has the right to: (i) assess a late charge; (ii) accrued interest; and (iii) suspend delivery to the County. Interest will be assessed to the County on the unpaid balance, two (2) business days after the date it is due and payable. Interest shall accrue daily during the period that the balance due remains unpaid, except during the period specified on the County's invoice in which an applicable balance may be paid in a timely manner. The foregoing late fee and interest rate shall be as specified in PWC's then applicable, Service Regulations and Charges as the same may be amended and modified from time to time.

13. Continuity of Delivery. PWC shall use reasonable diligence to supply water to the County at a pressure of at least fifty (50) pounds per square inch (PSI), and the County will be given the same general priority for water supply as all other customers of PWC, but PWC does not guarantee a continuous supply of wholesale water delivery to the County at a pressure of not less than fifty (50) PSI. PWC shall not be liable to the County or any of its customers for damage(s) or for failure in, interruptions to, or suspension of water delivery. The performance of PWC's obligations under this Agreement shall be excused during such times and to the extent such performance is prevented by reason of any event of beyond the control of PWC including, but not limited to, an Emergency Condition, an adverse condition or disturbance on PWC's system, a Force Majeure event, an order from any governmental agency or court with jurisdictional authority over PWC, or when it is reasonably believed that the continuance of the supply of water to the County would endanger persons or property. PWC reserves at all times the right to suspend water service, without liability on its part, at such times and for such periods and in such manner as it may deem advisable for the purpose of making adjustments to, changes in, or repairs to its water mains, plants, and facilities. When reasonably feasible, PWC will notify the County of any anticipated interruption of the delivery of water that is necessary for maintenance, repairs, or other foreseeable interruptions of delivery.

14. Water Shortages. PWC's rules and regulations governing Water Shortage Response, as set forth in an appendix to PWC's Service Regulations and Charges, shall be applicable to the terms of this Agreement and the County and its customers. The County shall be responsible for enforcing the requirements of PWC's Water Shortage Response when applicable and necessary. PWC also has the right to implement water conservation measures as needed in an emergency or water shortage impacting customers of PWC.

15. Water Projections and Plan. As of the Effective Date, the County is completing a study to project its future water needs related to its anticipated population growth. The County shall, within twelve (12) months after the Effective Date, provide to PWC its projected water needs for each of the Points of Delivery at intervals of, at a minimum, 5, 10, and 20 years from the Effective Date. The non delivery by the County of the foregoing study shall be considered an "event of default".

16. Inspections. The County shall inspect the County's System at each Point of Delivery annually for any leaks, damage to the County's System, or any issue requiring repair or replacement. PWC shall have the right, but is not required, to inspect the County's System at each Point of Delivery. PWC shall assume no liability or responsibility for the County's System as a result of any such inspection made pursuant to this Section 12.

17. Representations and Warranties. Each Party represents and warrants to the other Party that: (a) it is a unit of local government as defined in Article 20 of Chapter 160A; (b) this Agreement has been authorized and ratified by resolution of its governing board and confirmed in its minutes; (c) this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Parties in accordance with the terms and conditions of this Agreement; (d) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the representations, advice or recommendations of any other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement; and (e) each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

18. Notices. Any notice which either Party is required or desires to give the other hereunder shall be deemed sufficiently given if, in writing, it is delivered personally, or by any other means, to the addresses listed herein below, or such other address as either Party shall give to the other Party by written notice in accordance herewith. Any notice given herein shall be deemed delivered when received, or refusal to accept delivery by the addressee is noted thereon by the delivering agent (if the agent is USPS or a commercial overnight courier service).

To PWC:

Fayetteville Public Works Commission
Attn: Timothy J. Bryant, CEO/General Manager
PO Box 1089
Fayetteville, NC 28302

To County:

Hoke County Board of Commissioners
Attn: James Leach, Chairman; Gwen McGougan, Clerk to the Board
P.O. Box 210 (Mailing Address)
Raeford, NC 28376

19. Entire Agreement. This is the entire agreement of the Parties on the subject

matter hereof, and all prior negotiations, representations, proposals, letters, agreements, understandings, or other communications between the Parties, whether written or oral, including the April 14, 1999, Water Service Agreement between the Parties and all amendments thereto, are hereby merged into the Agreement and superseded by this Agreement.

20. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina without the application of the laws of any other state. The exclusive venue for all mediations and litigation and any other legal proceedings regarding this Agreement shall be the State and Federal Courts serving Cumberland County, North Carolina.

21. Severability. The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality and/or enforceability of any other portion or provision of this Agreement. Any invalid, illegal or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal or unenforceable; provided, however, severability shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement that is of the essence of this Agreement shall be void.

22. Amendment. This Agreement may be amended only in writing executed by both Parties.

23. Miscellaneous. This Agreement is by and between the Parties hereto, and nothing in this Agreement creates any express or implied contract, or duty owed, between PWC and any customer of the County. Neither Party shall acquire any right, title, or interest in or to the water supply distribution system of the other Party including, but not limited to, any mains, laterals, taps, meters, wells, towers, treatment facilities, or any other part of said system.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

Fayetteville Public Works Commission

By: _____
Timothy J. Bryant, CEO/GM

Date: 7/2/24

County of Hoke, North Carolina

By: _____
James A. Leach, Chairman

Date: 6/25/2024

HOKE COUNTY, N.C. ESTABLISHED 1911

ATTEST:

_____
Gwen McGougan, Clerk to the Board