

56 make such agreements on behalf of Chatham. Such written agreements are intended solely to allow for
57 extremely limited service or temporary service, and shall not be used to permanently alter the boundary
58 line, which may be altered only pursuant to written agreement as allowed by other provisions of this
59 Agreement. The facilities installed pursuant to this section shall not be subject to section 8(a) (Ownership
60 of Facilities).

61
62 6. One Unit is buyer and the other Unit is seller. (a) Whenever either Unit, through its Designated
63 Representative, notifies the other Unit that it desires to buy water and states the desired quantity (the
64 "Amount Requested"), the notified Unit shall sell the Amount Requested to the requesting Unit, subject to
65 subsection (c). The Amount Requested shall be stated in units of millions of gallons per day and shall be
66 no greater than the amount of water that can be supplied by the interconnection infrastructure. The
67 notification may be oral but shall be followed up promptly with a written verification pursuant to section 18
68 (Notice).

69
70 (b) The water may be supplied by direct interconnection between the Units' systems, or if agreed to by the
71 Units, through one or more middlemen. In the latter case, the Units recognize that appropriate agreements
72 with middlemen will be needed.

73
74 (c) The seller shall use its best efforts to supply the Amount Requested. Section 13 (Right to Suspend or
75 Reduce Supply of Water) addresses the right of the seller to supply less than the Amount Requested.

76
77 (d) The buyer shall pay the seller for the water that is supplied. Section 10 (Water Charges and Billing)
78 addresses payment matters.

79
80 7. One Unit is buyer or seller and the other Unit acts as a middleman. (a) When a Unit (the requesting
81 Unit), through its Designated Representative, its county or city manager, or the director of the department
82 that treats water to make it potable for sale to that Unit's residents, notifies the other Unit (the middleman
83 Unit or prospective middleman Unit) that the latter Unit is to act as a middleman for the transmission of
84 water, the prospective middleman Unit shall allow its water system to be so used. The requesting Unit may
85 be the seller of the water to a third party or it may be the buyer of the water from a third party. There may
86 be one or more additional middlemen for any of these transactions. For instance, in one transaction,
87 Chatham may be the seller, Durham and two other third parties may be middlemen, and another third party
88 may be the buyer.

89
90 (b) This Agreement does not require the prospective middleman Unit to spend money or use other
91 resources of the Unit to make connections or otherwise change its facilities to accommodate any
92 interconnection to facilitate the transmission.

93
94 (c) If water is supplied to a Unit acting as a middleman, and if the other Unit as seller has designated an
95 amount of water that it intends the middleman Unit to transmit to another middleman or to the buyer, it is
96 agreed that the Unit acting as a middleman shall transmit an amount that closely approximates the
97 designated amount. The Unit acting as a middleman shall use its best efforts to transmit that water but only
98 if the quality of the water is satisfactory, the conveyance does not negatively impact the middleman's
99 service to its customers and the buyer is in compliance with the terms of its contract with the middleman
100 Unit, including payment.

101 (d) When a Unit is seller of water and the other Unit is a middleman, the seller shall not look to the
102 middleman Unit for payment for the water.

103 (e) If the requesting Unit is to be the buyer of the water, the prospective middleman Unit shall not be
104 required to act as middleman until it has entered into an agreement with the buyer or some other person,
105 which agreement must be satisfactory to the parties thereto, to compensate the middleman Unit for its costs
106 of transmitting the water. Those costs may include construction of facilities, pumping, valve operation,
107 meter-reading, flushing, treatment, and administration of the transmission.

108 (f) If the requesting Unit is to be the seller of the water, the prospective middleman Unit shall not be
109 required to act as middleman until it has entered into an agreement with the buyer or some other person,
110 which agreement must be satisfactory to the parties thereto, to compensate the middleman Unit for its costs
111 of transmitting the water. Those costs may include construction of facilities, pumping, valve operation,
112 meter-reading, flushing, treatment, and administration of the transmission.
113

114 8. Ownership of Facilities. (a) Durham shall become the owner of and be responsible for the operation and
115 maintenance of all facilities located on the Durham side of the interconnection points. Chatham shall own
116 and be responsible for the operation and maintenance of all facilities located on the Chatham side of the
117 interconnection points. See section 5 (Installing facilities in Service areas) and other subsections of this
118 section for exceptions.
119

120 (b) Durham and Chatham shall agree as to ownership and maintenance of interconnection facilities. The
121 Durham city manager has authority to make such agreements on behalf of Durham, and the Chatham
122 county manager has authority to make such agreements on behalf of Chatham, provided that the
123 agreements shall make the decision as to ownership and maintenance so as to allow for economical and
124 efficient operation of the interconnection facilities.
125

126 (c) Durham shall be responsible for the operation and maintenance of the meter, located within the
127 interconnection facilities, which supplies water to Chatham. Chatham shall be responsible for the operation
128 and maintenance of the meter, located within the interconnection facilities, which supplies water to
129 Durham. The ownership and maintenance of any bi-directional meter which could serve either Chatham or
130 Durham will be as agreed in an agreement between the Units. The Durham city manager has authority to
131 make such agreements on behalf of Durham, and the Chatham county manager has authority to make such
132 agreements on behalf of Chatham, provided that the agreements shall make the decision as to ownership
133 and maintenance so as to allow for economical and efficient operation of the interconnection facilities.
134

135 (d) Notwithstanding subsection (a), it is agreed that Chatham or Durham may build, in the other Unit's
136 system, facilities that facilitate the transfer of water to the building Unit's water system, but only if those
137 facilities are first approved by that other Unit and are built according to specifications required for the
138 system where those facilities are constructed. The Unit that builds such facilities shall own them and shall
139 maintain them in good working order.
140

141 9. Water Use Restrictions. During any time that a Unit has water use restrictions in effect and is supplying
142 water to the other Unit as buyer pursuant to this Agreement, the buyer-Unit shall impose restrictions at least
143 equal to those being imposed by the seller, or the seller may withhold some or all of the Amount Requested
144 until such restrictions are placed into effect. The water use restrictions referred to in this section include
145 permanent water use restrictions and include voluntary restrictions.

146 10. Water Charges and Billing

147 (a) Rate. The price that either Unit as buyer shall pay the other Unit as seller shall be the same water rate,
148 metered in units of hundred cubic feet (CCF). The rate shall be Durham's Tier 1 base single-family
149 residential rates in effect at the time the water service is furnished. If Durham changes its rate structure so
150 that it no longer has a rate that is a base single-family residential rate, the rate that is applied to most
151 residential households in the Unit will be deemed to be its base single-family residential rate. For purposes
152 of that determination, a household is the person being billed for water

153 (b) Billing/Payment. Each Unit when acting as a buyer shall pay the Unit acting as seller for water
154 received as a buyer. The selling Unit shall invoice the buying Unit on a monthly basis. The buyer shall
155 add a late payment fee of one (1%) percent per month to the amount due for any payment made more than
156 20 days after the billing date.

157 (c) Payment Options. This subsection (c) applies to transactions under this Agreement in which the Units
158 are the buyer and the seller; that is, neither Unit is a middleman. In this subsection (c), a Unit is a "debtor"
159 when the outstanding balance for its purchases of water from the other Unit exceeds the outstanding

160 balance for its sales of water to the other Unit. Purchases and sales shall be offset against each other in
161 order to calculate the net balance.

162
163 (i) Except as provided by subsection (ii) and subsection (iii), the Unit that is the debtor shall have the
164 option to supply water to the other Unit instead of money to pay some or all of the net balance. Any
165 such payments by water instead of money shall not be subject to subsection (b).

166
167 (ii) When the net balance exceeds \$100,000, the option described in subsection (ii) shall apply to the
168 portion above \$100,000 only to the extent that the Units agree. In the absence of such an agreement,
169 the debtor shall make monetary payment, instead of by use of subsection (i), of the entire net balance.
170 The Durham city manager has authority to make such agreements on behalf of Durham, and the
171 Chatham county manager has authority to make such agreements on behalf of Chatham.

172
173 (iii) By each June 30, each unit shall pay to the other Unit all net balances existing on each June 10.
174 Payment made within that 20-day period shall be made pursuant to subsection (i) or by monetary
175 payment.

176
177 11. Intermittent Water Sales. Chatham and Durham recognize that, from time to time, each Unit may need
178 water because of changes in operation, installation of facilities, emergencies, or problems. Under these
179 circumstances, the Durham city manager has authority to make agreements to sell or to buy water on behalf
180 of Durham, and the Chatham county manager has authority to make agreements to sell or to buy water on
181 behalf of Chatham. The authority of the respective managers to make those agreements applies only to the
182 extent that the buying Unit is acting expeditiously to take care of the situation, but in any event, no such
183 agreement may last longer than one year.

184
185 12. Determination of Quantity Supplied. The amount of water a Unit as seller supplies to a Unit as buyer
186 for which the buyer shall pay the seller shall be measured by the seller's meter located at or near the
187 interconnection point between the seller and buyer's systems. The seller shall read the meter at least
188 monthly and promptly report the readings to the buyer. When Unit as buyer receives water through a
189 designated third party middleman, the quantity of water supplied shall be as determined by agreement
190 between the buyer and the third party middleman.

191 13. Right to Suspend or Reduce Supply of Water.

192 (a) Either Unit acting as seller may withhold, reduce, or suspend the supply of water in the event of
193 emergencies, water shortages, equipment problems, or other events or conditions that the Unit-seller
194 determines reduce the amount of water available for sale or the Unit-seller's ability to supply such water.

195 (b) A Unit acting as seller may suspend supplying water to the buyer as long as the buyer is in breach of its
196 obligation to pay the seller for water.

197 (c) A Unit acting as middleman may withhold, reduce, or suspend the transmission of water in the event of
198 emergencies, water shortages, equipment problems, or other events or conditions that the Unit-seller
199 determines reduce the middleman's ability to transmit such water.

200 (d) A Unit acting as seller or buyer in a transaction where the other Unit is acting as middleman may
201 withhold, suspend, or terminate supplying water at any time without liability to the Unit acting as
202 middleman for such suspension or termination.

203 (e) A Unit acting as buyer may require the Unit acting as seller to withhold, reduce, or suspend supplying
204 water in the event of emergencies, water shortages, equipment problems, or other events or conditions that
205 the Unit-buyer determines reduce the amount of water needed by the buyer or the buyer's ability to receive
206 the water.

207 14. Regulatory Compliance.

208 (a) Selling Unit responsible for treatment of water. A Unit that supplies water to the other Unit as buyer
 209 understands that the buying Unit is not expected to treat the water before it is consumed by the buying
 210 Unit’s customers. When a Unit as seller supplies water to the other Unit as buyer, the seller shall be
 211 responsible for securing all necessary Federal and State approvals and for compliance with all applicable
 212 Federal and State regulations, laws, orders, statutes, ordinances, codes, and rules relating to the quality and
 213 treatment of the water.

214 (b) Buying Unit responsible for transfer. When a Unit as seller supplies water to the other Unit as buyer,
 215 the buyer shall be responsible for securing all necessary Federal and State approvals and for compliance
 216 with all applicable Federal and State regulations, laws, orders, statutes, ordinances, codes, and rules relating
 217 to the transfer of the water.

218 (c) Prospective middleman may require assurances. When a Unit as buyer or seller requests the other Unit
 219 to act as middleman, the middleman Unit may require the requesting Unit or the third party seller or buyer
 220 to be responsible for securing all necessary Federal and State approvals and for compliance with all
 221 applicable Federal and State regulations, laws, orders, statutes, ordinances, codes, and rules relating to the
 222 transfer of the water. If the prospective middleman Unit does not obtain an agreement that it finds to be
 223 satisfactory, it may refuse to act as middleman.

224 15. Committed Water Sales from Durham to Chatham

225 (a) By each March 1, the Chatham County Manager or designee and the Durham City Manager or designee
 226 shall confer and determine the daily quantity of water that Durham will commit to sell to Chatham the
 227 following year, which shall be the daily quantity that Chatham will commit to buy from Durham for that
 228 year. That quantity, stated as millions of gallons per day (MGD), is the “Actual Daily Amount.” The
 229 Maximum Actual Daily Amount that Durham will provide Chatham is specified in column 3 of the table in
 230 subsection (b). In any given year, the Actual Daily Amount that Durham commits to sell to Chatham may
 231 vary as specified in column 2 of the table in subsection (b). The sales under this subsection (a) shall cease at
 232 the earlier of when (i) a second water intake on the western shore of Jordan Lake is put in operation and an
 233 associated water treatment plant is put in service, or (ii) Chatham completes an expansion of its water
 234 treatment plant and main transmission line.

235 (b) The Actual Daily Amount referred to in subsection (a) shall be within the ranges shown in the
 236 following table:

Period For Sales	Durham’s water sales commitment	Maximum Actual Daily Amount
4-1-2009 through 3-31-2011	0 – 1 MGD	1
4-1-2011 through 3-31-2013	0 -2 MGD	2
4-1-2013 through 3-31-2015	0 -3 MGD	3
4-1-2015 through 3-31-2018	0 -4 MGD	4

237

238 (c) In supplying water under this section 15, Durham shall not be required to supply water at a
 239 gallons/minute rate greater than the Actual Daily Amount (gallons/day) divided by 1440 (minutes/day).

240 (d) For all sales from Durham to Chatham made under this section 15, Durham may not withhold, reduce,
 241 or suspend the supply of water except temporarily in the event of emergency, such as equipment problems.
 242 In case of actions taken pursuant to the preceding sentence, Durham shall immediately notify Chatham of

243 the action and shall make every reasonable effort to address the situation , as quickly as possible, so that it
244 may cease the action taken pursuant to the preceding sentence.

245 16. Indemnification.

246 (a) As used in this section 16:

247 (1) Definitions. "Charges" means claims, judgments, costs, damages, losses, demands,
248 liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included
249 without limitation within "Charges" are interest and reasonable attorneys' fees assessed as part of
250 any such item). "Indemnitees" are the non-indemnifying Unit's officers, officials, independent
251 contractors, agents, and employees, excluding the indemnifying Unit.

252 (2) Survival. This section 16 (Indemnification) shall remain in force despite termination
253 of this Agreement, whether by expiration of the term or otherwise.

254 (3) Limitations of the indemnifying Unit's obligation. If this section 16 is in, or is in
255 connection with, a contract relative to the design, planning, construction, alteration, repair or
256 maintenance of a building, structure, highway, road, appurtenance or appliance, including moving,
257 demolition and excavating connected therewith, then this section 16 shall not require the
258 indemnifying Unit to indemnify or hold harmless the other Unit or its Indemnitees against liability
259 for damages arising out of bodily injury to persons or damage to property proximately caused by
260 or resulting from the negligence, in whole or in part, of the non-indemnifying Unit or Indemnitees.

261
262 (b) A Unit that breaches this Agreement or is negligent in performing under this Agreement shall defend,
263 indemnify, and save harmless the other Unit and Indemnitees for Charges arising from the breach or such
264 negligence.

265
266 17. No third party beneficiaries. This Agreement is intended for the benefit of Chatham and Durham and
267 not any other person.

268 18. Notice. (a) Unless otherwise stated in this Agreement, all notices referred to in this Agreement shall be
269 in writing and shall be given either by personal delivery, email, fax, or certified United States mail, return
270 receipt requested, addressed as follows:

271 To Durham:

272 Director of Water Management

273 City of Durham

274 101 City Hall Plaza

275 Durham, NC 27701

276 The fax number is (919) 560-4479.

277 If the sender uses email, the sender is responsible for ascertaining the name and email address of
278 the then-current director. At the time of the making of this Agreement, email to the director is to
279 be addressed to both of the following: vicki.westbrook@durhamnc.gov and

280 don.greeley@durhamnc.gov

281

282 To Chatham:

283 *[Insert name and address]*

284 The fax number is _____.

285

286 (b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to
287 receive notice may be made by either Unit by notice given to the other Unit. A notice shall be deemed
288 given at the time of actual delivery, if it is personally delivered or sent by email or fax, unless the sender's
289 email system or fax indicates that the email or fax was not received. If the notice is sent by United States
290 mail, it shall be deemed given upon the third calendar day following the day on which it is deposited with
291 the United States Postal Service or upon actual delivery, whichever first occurs.

292

293 19. Appointment of Personnel. The Durham City Manager shall designate persons to carry out Durham's

294 obligations under this Agreement. The Chatham County Manager shall designate persons to carry out
295 Chatham's obligations under this Agreement.

296
297 20. Forum and venue. Unless the Units otherwise agree, the sole forum and venue for all litigation arising
298 out of this Agreement shall be in the county of the Unit named as defendant, in the North Carolina General
299 Court of Justice. The Durham city manager has authority to make such agreements on behalf of Durham,
300 and the Chatham county manager has authority to make such agreements on behalf of Chatham.

301
302 21. Principles of Interpretation. In this Agreement, unless the context requires otherwise: (a) References
303 to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or
304 replacing the statute or regulation, as adopted from time to time. References to contracts and agreements
305 shall be deemed to include all amendments to them, as adopted from time to time. (b) References to a
306 "Section" or "section" shall mean a section of this agreement. (c) Titles of sections and paragraphs in this
307 Agreement are for convenience only, and shall not be construed to affect the meaning of this Agreement.

308
309 22. Amendments. Entire Agreement. Before amending this agreement, each Unit shall, if required by
310 applicable law, give notice, conduct a public hearing, and adopt an ordinance. A modification of this
311 Agreement is not valid unless signed by both Units and otherwise in accordance with requirements of law.
312 Further, a modification is not enforceable against Durham unless the City Manager or a deputy or assistant
313 City Manager signs it for Durham. A modification is not enforceable against Chatham unless the County
314 Manager or a deputy or assistant County Manager signs it for Chatham.

315
316 23. Termination. This Agreement may be terminated by written agreement of both Units. Either Unit may
317 terminate this Agreement because of substantial breach of this Agreement by the other Unit provided that
318 the terminating Unit has given 90 days' written notice to the breaching Unit and the breaching Unit has not
319 cured the breach during that period. This section 23 does not limit the rights to enforce this Agreement
320 through any other action or remedy. Whether this Agreement terminates as provided in section 4
321 (Duration) or earlier, it is agreed that on termination, all obligations that are still executory on both sides
322 are discharged but any right based on prior breach or performance survives.

323 [Signatures and notarizations]