

**WHOLESALE BULK WATER SERVICE AGREEMENT**  
(EXCLUSIVE WITH MINIMUM PURCHASES)

THIS WHOLESALE BULK WATER SERVICE AGREEMENT, (this “Agreement”) dated as of the 1st day of October, 2021, by and between the COUNTY OF BRUNSWICK, a political subdivision of the State of North Carolina (the “County”), and the TOWN OF OAK ISLAND, a municipal corporation organized under the laws of the State of North Carolina (the “Town”) is made pursuant to North Carolina General Statutes, Article 20, Part 1 of Chapter 160A; Article 16, Part 1 of Chapter 160A; and Article 15 of Chapter 153A, and in consideration of the promises made to one another in this Agreement, as follows:

WHEREAS, City desires to obtain an adequate and dependable water supply from the County; and

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

WHEREAS, Town acknowledges and understands that this Agreement establishes a minimum amount of treated water that the Town is obligated to pay for; and

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

WHEREAS, Town is voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the County agrees to furnish water, and Town 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 Usage” means the minimum amount of treated water Town must compensate the County for during the Monthly Payment Period, and each month thereafter, regardless of whether Customer actually takes such quantity of water.

(b) “Monthly Payment” means the amount of money to be paid to the County by Town during each Monthly Payment Period.

(c) “Monthly Payment Period” means any calendar month.

(d) “Agreement Date” means the effective date of this Agreement asset forth on the first page hereof.

(e) “Customer” means any customer with which the County contracts with to furnish water.

(f) “Daily Average” means the total annual volume delivered to the Town divided by the number of days in the calendar year, provided at the Point(s) of Delivery.

(g) “Emergency Condition” means a condition that threatens the public health, safety, or welfare.

(h) “Town’s Peaking Factor” means the annual peak day demand of the Town as determined from the total water volume going through all of the Town’s Point(s) of Delivery during the peak day divided by annual average daily demand.

(i) “Point of Delivery” means the metering point(s) between the provision of service by the County to Town, all facilities upstream of which shall be the sole responsibility of the County, and all facilities downstream of which shall be the sole responsibility of the Town. There may be multiple Point of Delivery locations for the Town. The meter, meter vault, associated check valves, and valves are the property of the County.

(j) “System” means, collectively, the water storage, treatment, transmission, distribution, and supply components comprising an entity’s potable water infrastructure.

**SECTION 2**  
**WATER SERVICE**

2.1 Minimum Take-or-Pay Quantity. The County agrees to sell to the Town at the Point(s) of Delivery defined hereafter, and Town agrees to purchase and take at said Point(s) of Delivery, treated water provided at a rate no greater than the Maximum Instantaneous Demand and pressure stated herein. Town agrees to pay the monthly Minimum Usage Charge as indicated on the County's published rate and fee sheet (with payment required whether or not the actual amount is taken) as consideration for the provision of treated water.

2.2 Minimum meter size. The minimum meter size for new or replacement meters shall be 8". No meter shall be downsized without mutual agreement from both parties.

2.3 Maximum Instantaneous Demand. The maximum instantaneous demand through any single meter of Town during the term of this Agreement shall not exceed either the maximum instantaneous demand capacity of the meter according to the manufacturer's meter specifications or the following standard maximum instantaneous demands based on meter size, whichever is less:

<u>Meter Size</u>	<u>Rate</u>
6"	900 gpm
8"	1700 gpm
10"	2200 gpm
12"	3100 gpm

County shall not be obligated to supply water at a rate in excess of the maximum instantaneous demand specified herein. In the event that a meter registers in excess of the maximum instantaneous demand rate three or more times in any thirty-day period, the County shall have the right to install a larger size meter and appurtenances at the Town's expense. The Town shall be obligated to pay monthly fees based on the new meter size in accordance with the County's standard rate and fee sheet.

2.4 Daily Demand. In order to provide for the public health and welfare, the County will use its best efforts to develop additional treatment capacity for all customers of the water system as needed to meet the water treatment needs of all customers and will use sound financial planning to provide funds through rates, user fees, and related charges to provide the requisite facilities to meet such needs. The daily supply available to each customer is subject to limitations upon the County's ability to meet such demands caused by (a) the amount of raw water available to the

County through its wells and from its allocated capacity in the Lower Cape Fear Water & Sewer Authority raw water system, (b) the amount of water available from the Cape Fear River as part of the regulatory-determined “safe yield” or actually available during drought conditions, (c) the obligations of the County pursuant to Water Service Agreements to deliver treated water to other customers, (d) the capacity of the water system, (e) completion of any improvements the County elects to make to enable it to provide additional treated water to its Customers. Upon request by the County, Town shall provide a map detailing areas supplied or to be supplied by the Town as well as updated, estimated peak day demands and annual water system demands for the current year and the next four years at a minimum.

2.5 Quality. The County agrees to furnish the Town, at the Point of Delivery specified herein, potable treated water meeting applicable quality standards of the North Carolina Department of Environmental Quality, Division of Water Resources. It is acknowledged by both parties that currently the County primarily uses chloramines as a residual disinfectant but must change to free chlorine for some period each year and this may result in changes in taste and odor. The County will provide advance notification of these changes to the Town. The Town acknowledges that the water quality and responsibility for flushing downstream of the Point(s) of Delivery is the Town’s responsibility.

2.6 Point(s) of Delivery. The Points of Delivery for the Town are located at: NE 42<sup>nd</sup> St. at 4202 E. Yacht Dr. (6” meter) and on the north side of E. Oak Island Dr. between NE 79<sup>th</sup> St. and Crowell St. (8” meter). Town agrees to contract with the County for storage capacity or construct adequate water storage so that the maximum rate of delivery will not exceed the maximum instantaneous demand stated herein and so that the Town’s Peaking Factor does not exceed 3.0 (annual peak day demand divided by annual average daily demand).

New points of delivery providing water service to locations within the jurisdiction of the Town may be approved by the County. Town agrees to furnish the site at the Point of Delivery. Town shall design and construct a separate vault for the new Point of Delivery in accordance with County specifications and details. The County will review and approve the design prior to construction. The vault will include the billing meter, control valve, isolation valves, various appurtenances, and appropriate SCADA equipment. The Town shall bear all costs associated with such installation and shall deed and dedicate the facilities to the County upon completion and acceptance by the County.

2.7 Water Pressure. County shall furnish water at operating pressures as required by the North Carolina Department of Environmental Quality, Division of Water Resources at the Point(s) of Delivery. If Town requires a greater pressure than that which meets the regulatory requirements, then Town 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, unavailability or contamination of raw water, 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.

2.8 Meter Reading. The County shall provide a meter reading at or near the end of each calendar month that may be used in conjunction with the previous reading to approximate the flow through the meter during the calendar month. The Town shall have access to the meter for reading purposes only, but all adjustments and maintenance shall be performed by the County.

2.9 Testing of meters. The County may, at any point, and the Town may request in writing not more than once in any twelve (12) month time period, the County to test or return the meter to the manufacturer for assessment. If upon any test, the percentage of inaccuracy of any billing meter equipment is found to be in excess of three percent (3%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of twelve (12) months. If for any reason any billing meters are out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such billing meters are out of service or out of repair shall be estimated upon the basis of the best data available. Otherwise, the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (ii) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the billing meter or meters were registering accurately. The cost of meter testing or assessment performed at the request of the Town shall be borne by the County if the meter is found to be reading in excess of 103% of actual flow amounts through the meter; otherwise these costs shall be paid by the Town.

2.10 County as Exclusive Water Provider. The Town shall not acquire or produce water from any source other than the County; provided however, the Town may at all times without the County's consent obtain treated water from, and maintain, repair and replace treated water systems in existence and owned and operated by the Town at the time the Town first purchased water from the County. Increasing the capacity of these systems is allowed only with written authorization from the County.

2.11 Temporary Interruptions. The County may at any time shut off water due to accident, emergency, for the purpose of making connections, alterations, repairs, and changes to the water system. The County will use its best efforts to give notice in advance of water service interruptions when such interruptions can be reasonably expected. It is the obligation of the Town to protect Town's facilities so that damage will not occur if water is shut off without notice.

2.12 Curtailment. It is recognized by both parties that curtailment measures may have to be implemented to meet an emergency condition. If the County reduces the amount of treated water available to its customers, it will reduce the supply available to each user in accordance with the latest approved Water Shortage Response Plan. The Town agrees to approve and enforce the County's Water Shortage Response Plan and Water Ordinance, or similar Plan and Ordinance no less stringent, for its own ratepayers.

2.13 County Facilities. In the event that the Town annexes or otherwise expands their boundaries into areas served by County facilities, Town acknowledges the County's right to provide service within these areas.

### **SECTION 3** **PAYMENT AND BILLING**

3.1 Rates and Fees. Rates and fees are determined using the cost of service principles as described in manual M-1 by the American Water Works Association (AWWA), as they may be amended from time to time. The County shall review and amend its rates and fees on an annual basis and shall publish these prior to July 1<sup>st</sup> of each year. Town agrees to pay applicable wholesale rates, fees, and charges assessed by the County as indicated on the approved Rate and Fee schedule. Current wholesale rates, which are subject to change, include a Base Service Charge, Minimum Usage Charge, and a volumetric rate per 1000 gallons used.

3.2 Billing. On a monthly basis, County shall bill Town for water service provided through each bulk meter. The bills shall be payable within 30 days of the date of the invoice.

3.3 Maximum Daily Demand. It is recognized by the County and the Town that the Town's Water Service Agreement constitutes an essential part of the County's financing plan and Capital Improvement Plan. The Town shall make payment each month throughout the term of this Agreement in accordance with the County's published rates and fees. The size and number of meters (Points of Delivery) impact the revenue available for expansion, operation, and maintenance of the system and may not be altered without the County's consent.

3.4 Limitation on Resale. After the date of this Agreement, unless required to do otherwise by an applicable regulatory authority or a court of competent jurisdiction, Town shall not enter into, renew, or amend with regard to volume of water to be supplied, any agreement to provide wholesale or new retail water for use outside its corporate boundaries unless each such agreement is approved by the County. The Town may continue to provide water service to locations that it currently serves outside of its corporate boundaries as of the date of this agreement. Town shall not become a party to any contract for the sale of water to another water provider (“water-wheeling”). The County will use its best efforts to furnish and remain in a position to furnish water sufficient for all reasonable treated water requirements of Town, but its obligation shall be limited to the amount of treated water available to it from the System during routine operation.

#### **SECTION 4**

#### **TERM, TERMINATION, AND RENEWAL OF AGREEMENT**

4.1 This Water Service Agreement shall be in full force and effect for a period ending June 30, 2061. Following the term, this Agreement shall automatically renew for one (1) year terms unless a party gives notice to the other party of non-renewal not less than one hundred eighty (180) days prior to expiration of the then-current term.

4.2 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.

4.3 This Agreement may be renewed or amended by mutual 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. Each party, 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 a party at any time to require the performance of any of the provisions of this Agreement shall in no way affect the party's right hereunder to enforce the same, nor shall any waiver by a party 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 Town: Town of Oak Island Manager  
4601 East Oak Island Drive  
Oak Island, NC 28465

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 § 66-358.1 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.

**BRUNSWICK COUNTY**

By: \_\_\_\_\_

Printed Name:

Title:

Date: \_\_\_\_\_

**TOWN OF OAK ISLAND**

By: \_\_\_\_\_

Printed Name: Ken Thomas

Title: Mayor

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Julie A. Miller, Director of Fiscal Operations  
Brunswick County, North Carolina

**APPROVED AS TO FORM**

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