



ROCKY MOUNT
CITY MANAGER'S OFFICE
THE CENTER OF IT ALL

City Council Agenda

Date: 05/22/2019

To: The Honorable Mayor and City Council

Subject: Amendment to the 2006 Water Purchase Contract between Nash County and the city of Rocky Mount.

Summary of Requested Action:

Recommend City Council authorize the Mayor and City Clerk to execute the attached amendment of the 2006 Water Purchase Contract to incorporate the provisions of the February 4, 2019 Water Line Purchase Agreement with Nash County.

Department Requesting Action: Water Resources

CB

Budgetary Impact:

Nash County's water allocation will increase from 450,000 GPD with a minimum purchase of 100,000 GPD to 565,000 GPD with a minimum purchase of 215,000 GPD. The potential monthly increase in water sales is \$ 7,100.

City Manager's Recommendation:

Recommend Approval. RBoney 6/3/19

MEMORANDUM



ROCKY MOUNT
WATER RESOURCES
THE CENTER OF IT ALL

To: Chris Beschler, Assistant City Manager *CB*
From: Brenton Bent, Director of Water Resources *BB*
Date: 05/22/2019
Re: Amendment to Water Purchase Contract Between Nash County and The City of Rocky Mount

The city of Rocky Mount made and entered into a Water Line Purchase Agreement with Nash County on February 4, 2019 under terms described in the executed agreement (attached). As a result, the 2006 Water Purchase Agreement is amended to incorporate the provisions of the Dortches Water Agreement, increase the current allocation to Nash County and to address a second point of delivery.

As you will see, the Dortches Water Agreement dated January 28, 1985 will be terminated and the 45,000 GPD reallocated to Nash County. Nash County has also requested an additional 70,000 GPD which will result in a total increase in allocation from 450,000 GPD to 565,000 GPD. The minimum purchase requirement will increase from 100,000 GPD to 215,000 GPD. This has the potential to increase water sales by approximately \$7,100 per month. The 2006 Water Purchase agreement is also amended to add a second metering point to be located at 1972 North Halifax Road.

The attached amendment was revised by the City Attorney and approved by the County Attorney. The Water Resources Department recommends that City Council authorize the Mayor and the City Clerk to execute this amended contract on behalf of the city. In the interim, please advise if additional information is needed regarding this recommendation.

Attachments:2

NORTH CAROLINA

NASH COUNTY

**AMENDMENT TO WATER PURCHASE CONTRACT BETWEEN
THE CITY OF ROCKY MOUNT AND NASH COUNTY**

THIS AMENDMENT is entered into as of the ___ day of _____, 2019, by and between the City of Rocky Mount hereinafter referred to as the City, and Nash County, hereinafter referred to as the County. The Effective Date of this Amendment shall be the date on which the last party signs.

W I T N E S S E T H:

WHEREAS, the City and the County entered into a Water Purchase Agreement dated November 6, 2006 (the “2006 Water Purchase Agreement”) for the sale of water by the City to the County to supply the County’s customers in Nash County Central Nash Water Sewer District formerly known as “Water Area No.3” as shown on the map incorporated in the 2006 Water Purchase Agreement; and

WHEREAS, the Town of Dortches and the City entered into: (a) that certain Water Purchase Contract dated January 28, 1985 (the “Dortches Water Agreement”) regarding the Town of Dortches’s purchase of water from the City with an allocation of 45,000 GPD and which has an effective term of forty (40) years from the date of the initial delivery of water; and (b) that certain Wastewater Treatment Contract dated January 28, 1985 (the “Dortches Wastewater Agreement”) regarding the City’s transportation and treatment of the Town of Dortches’s wastewater, which has an effective term of forty (40) years from the date of the initial receipt of any wastewater (collectively, the “Dortches Contracts”); and

WHEREAS, the County proposes to create a Northern Nash Water System, which will serve certain customers in and around the Town of Dortches, including the Interstate 95 rest area and has or will purchase the water lines operated by the City as described in the Water Line Purchase Agreement dated February 4, 2019; and

WHEREAS, in order to facilitate the Northern Nash Water System, the Town of Dortches and the County have heretofore entered into the following agreements: (a) that certain Joint Interlocal Cooperation Agreement dated January 4, 2016 regarding the operation and maintenance of the Town of Dortches’s water and sewer systems, which has an effective term of ten (10) years from the Effective Date, as defined therein; and (b) that certain Water and Sewer System Purchase Agreement dated October 2, 2017, whereby the Town of Dortches assigned to Nash County all of its right, title, interest, obligations, duties, and/or liabilities under the Dortches Contracts; and

WHEREAS, the proposed service area to be added to Nash County Central Nash Water Sewer District formerly known as “Water Area No. 3” is shown on a map entitled "Proposed District 3 Service Area (Northern Nash District)” prepared by the Nash County Mapping

Department dated May 30, 2019, which map is incorporated herein by reference; and

WHEREAS, the City and the County have entered into a Water Line Purchase Agreement dated the 4th day of February 2019, under the terms of which the City will convey to the County certain water lines and easements therein described; and

WHEREAS, the County has requested an additional water allocation of 70,000 gallons per day to be added to the 450,000 gallons per day allocation under the 2006 Water Purchase Agreement to serve customers in the Northern Nash Water System; and

WHEREAS, the City and the County have agreed that on the Effective Date of this Amendment the Dortches Water Agreement shall terminate and the 45,000 gallons per day Dortches allocation shall also be added to the allocation under the 2006 Water Purchase Agreement for a total County allocation thereunder of 565,000 gallons per day;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligation contained herein, the parties agree as follows:

1(a) Section 1(a) "Quantity and Quality" of the 2006 Water Purchase Agreement is amended to increase the maximum allocation from a monthly average of 450,000 gallons per day to a not to exceed monthly average of 565,000 gallons per day, and to increase the required minimum purchase requirement from 100,000 gallons per day to 215,000 gallons per day.

1(b) Section 1(b) "Point of Delivery and Pressure" of the 2006 Water Purchase Agreement is amended to add a second metering point in addition to the metering point located on West Mount Drive near the entrance road to the water treatment plant at the Tar River Reservoir, (the "Existing Point of Delivery"), which second metering point shall be located at 1972 North Halifax Road, or such other location as is mutual agreeable between the parties (the "New Point of Delivery") All reference to "metering point", "point of delivery", "metering equipment", or similar references in the 2006 Water Purchase Agreement that formerly applied to the Existing Point of Delivery shall now apply to both the Existing Point of Delivery and the New Point of Delivery.

2(a) Section 2(a) "Payment Dates" of the 2006 Water Purchase Agreement is rewritten to read as follows:

2 The County Agrees:

(a) Payment Dates: To pay the CITY not later than the past due date posted on the statement for water furnished, which said past due date shall be at least 10 days but not more than 20 days after the date of statement for water delivered in accordance with the CITY'S Municipal Resale Water Schedule.

2(b) Section 2(b) "Rates" of the 2006 Water Purchase Agreement is rewritten to read as follows:

2 The County Agrees:

(b) Rates: The COUNTY shall not, during the term of this Contract, sell water to its customers at an amount less than the "outside rate" charged by the CITY to its customers located outside the corporate limits without the written consent of the CITY. The COUNTY shall submit its rate schedule to the CITY for determination of compliance upon the adoption of a rate schedule and any subsequent modification thereof. The City shall notify the COUNTY of changes in its rate schedule so that the COUNTY may adjust its rates accordingly.

3. Northern Nash Water Systems. References in the 2006 Water Purchase Agreement to Central Nash Water Sewer District formerly known as "Nash County Water Area No.3" shall include the proposed Northern Nash Water System unless the context clearly requires otherwise.

4. Dortches Contracts. The Dortches Water Agreement shall terminate on the Effective Date of this Amendment. The Dortches Wastewater Agreement shall remain in full force and effect.

5. 2006 Water Purchase. Except as amended by this Amendment, the 2006 Water Purchase Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and the County have each executed this Amendment in its respective corporate name by their duly authorized officers in duplicate originals, one of which is retained by each of the parties hereto, effective as set forth above.

CITY OF ROCKY MOUNT

By: _____

David W. Combs, Mayor

Date: _____

ATTEST:

Pamela O. Casey, City Clerk
(SEAL)

NASH COUNTY

By: _____

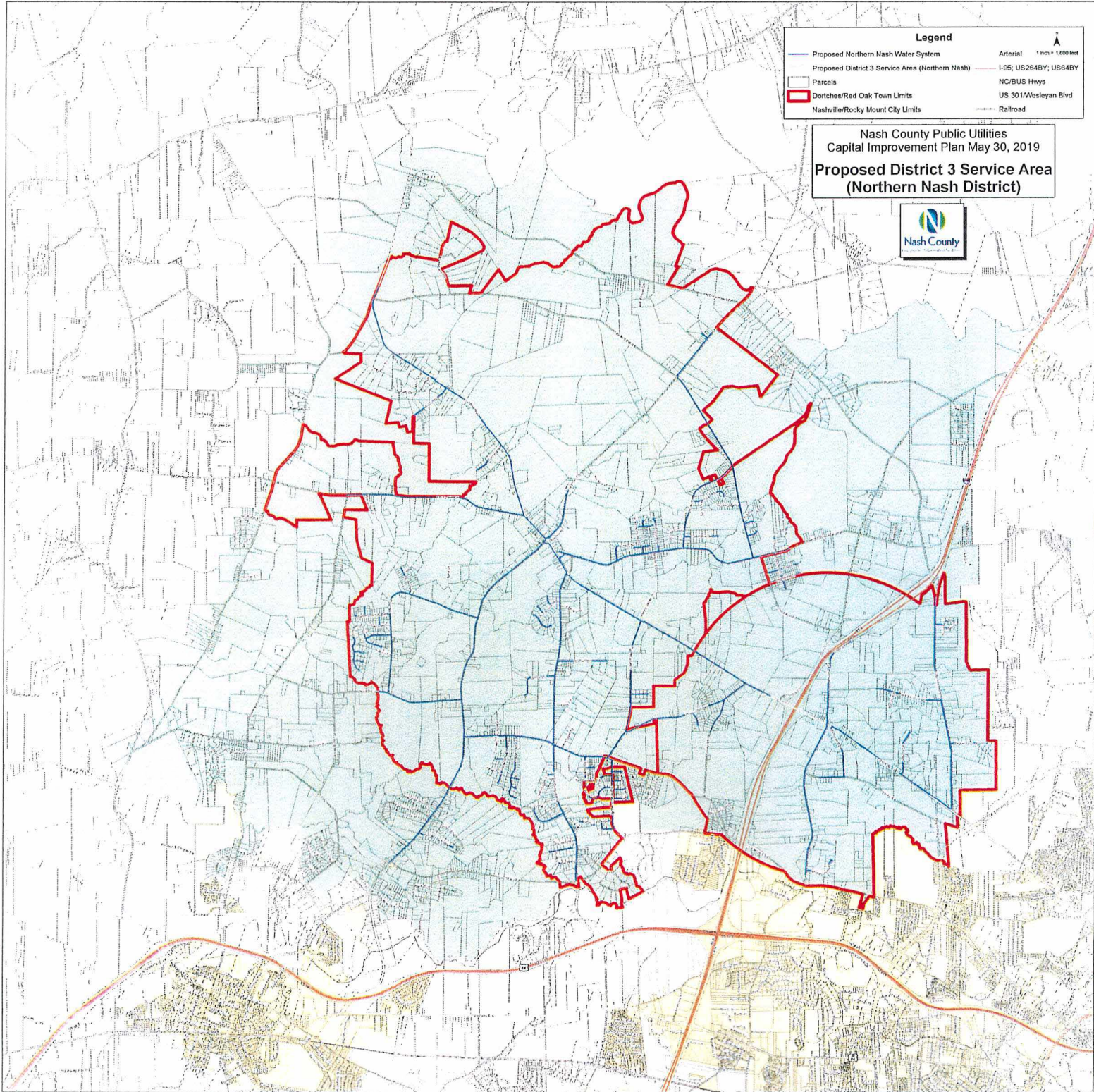
Robbie B. Davis, Chairman

Nash County Board of Commissioners

Date: _____

ATTEST:

Janice Evans, Clerk of the
Board of Commissioners
(SEAL)



Legend

Proposed Northern Nash Water System	Arterial 1 inch = 1,600 feet
Proposed District 3 Service Area (Northern Nash)	I-65, US264BY, US64BY
Parcels	NC/BUS Hwys
Dortches/Red Oak Town Limits	US 301/Wesleyan Blvd
Nashville/Rocky Mount City Limits	Railroad

Nash County Public Utilities
Capital Improvement Plan May 30, 2019
**Proposed District 3 Service Area
(Northern Nash District)**



NORTH CAROLINA

WATER LINE PURCHASE AGREEMENT

NASH COUNTY

THIS WATER LINE PURCHASE AGREEMENT (the "Agreement") is made and entered into this the 4th day of February, 2019 (for reference purposes only), by and between the **CITY OF ROCKY MOUNT**, a North Carolina municipal corporation, duly organized and existing under the laws of the State of North Carolina, hereinafter referred to as "Rocky Mount", and **NASH COUNTY**, a unit of local government in North Carolina, duly organized and existing under the laws of the State of North Carolina, hereinafter referred to as "Nash County". The "Effective Date" of this Agreement shall be the date of the last party to sign this Agreement.

WHEREAS, Article 20, Chapter 160A of the General Statutes of North Carolina authorizes and empowers 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; and

WHEREAS, the Town of Dortches and Rocky Mount entered into: (a) that certain Water Purchase Contract dated January 28, 1985 (the "Dortches Water Agreement") regarding the Town of Dortches's purchase of water from Rocky Mount, and which has an effective term of forty (40) years from the date of the initial delivery of water; and (b) that certain Wastewater Treatment Contract dated January 28, 1985 (the "Dortches Wastewater Agreement") regarding Rocky Mount's transportation and treatment of the Town of Dortches's wastewater, and which has an effective term of forty (40) years from the date of the initial receipt of any wastewater (collectively, the "Dortches Contracts");

WHEREAS, Nash County proposes to create a Northern Nash Water System, which will serve certain customers in and around the Town of Dortches, including the Interstate 95 rest area, and Nash County wishes to purchase the Water Lines and Easements, as hereinafter defined;

WHEREAS, in order to facilitate the Northern Nash Water System, the Town of Dortches and Nash County have heretofore entered into the following agreements: (a) that certain Joint Interlocal Cooperation Agreement dated January 4, 2016 regarding the operation and maintenance of the Town of Dortches's water and sewer systems, which has an effective term of ten (10) years from the Effective Date, as defined therein; and (b) that certain Water and Sewer System Purchase Agreement dated October 2, 2017, whereby the Town of Dortches assigned to Nash County all of its right, title, interest, obligations, duties, and/or liabilities under the Dortches Contracts;

WHEREAS, Nash County and Rocky Mount have heretofore entered into a Water Purchase Agreement dated November 6, 2006 (the "2006 Water Purchase Agreement") regarding the purchase of water;

WHEREAS, Nash County and Rocky Mount have determined that it is in their mutual best interest for Rocky Mount to convey the Water Lines and Easements, as hereinafter defined, to Nash County all as set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **TERM OF THE AGREEMENT.** The term of this Agreement shall commence upon the Effective Date hereof and exist and continue until the closing of the purchase and sale of the Water Lines but no longer than termination date provided in paragraph 5.

2. **JOINT AGENCY.** No Joint Agency as defined in N.C. Gen. Stat. § 160A-462, or any other form of agency, is established by this Agreement.

3. **EMPLOYMENT.** Nash County shall have the sole responsibility, authority, and discretion to employ or otherwise appoint the personnel necessary for the implementation of its duties under this Agreement. Rocky Mount shall have the sole responsibility, authority, and discretion to employ or otherwise appoint the personnel necessary for the implementation of its duties under this Agreement.

4. **THE WATER LINES.** The term "Water Lines" as used in this Agreement shall mean the real property, water transmission mains, meters, valves, hydrants, service laterals, pumping stations, metering facilities, collection lines, manholes, and all other related equipment, facilities, and appurtenances of and to the following water lines:

a. One and Six-Tenth (1.6) miles, or Eight Thousand, Six Hundred (8,600) feet, more or less, of twelve (12) inch ductile iron water main from a meter vault to be set on or about the real property located at 2056 N. Halifax Road (S.R. 1544), Rocky Mount, Nash County, North Carolina, to the existing water meter vault located at the intersection of N. Halifax Road (S.R. 1544) and N.C. Highway 43 (Dortches Boulevard);

b. Fifty-Four Hundredths (0.54) of a mile, or Two Thousand, Eight Hundred Seventy-Five (2,875) feet, more or less, of six (6) inch ductile iron water main from the intersection of N. Halifax Road (S.R. 1544) and N.C. Highway 43 (Dortches Boulevard), to the intersection of N. Halifax Road (S.R. 1544) and Alwood Drive (S.R. 1588); and

c. Thirty-Eight Hundredths (0.38) of a mile, or Two Thousand (2,000) feet, more or less, of six (6) inch ductile iron water main from the intersection of N. Halifax Road (S.R. 1544) and Alwood Drive (S.R. 1588), to the existing meter vault located along Alwood Drive (S.R. 1588), which currently serves the Interstate 95 rest area.

5. **PURCHASE OF THE WATER LINES.** Rocky Mount shall convey to Nash County, and Nash County shall purchase from Rocky Mount, all of Rocky Mount's interest in the Water Lines. It is understood and agreed that the Water Lines will be conveyed as is, where is, without representations or warranties of any kind. The purchase price for the Water Lines is One Hundred Seven Thousand, Five Hundred and NO/100 Dollars (\$107,500.00) (the "Purchase Price"). The Closing of the purchase and sale of the Water Lines (the "Closing") shall occur on a date and time specified by Nash County in its notice of purchase to Rocky Mount (the "Notice of Purchase") but in no event shall the Closing take place earlier than thirty (30) days, nor later than sixty (60) days

after Rocky Mount's receipt of the Notice of Purchase. There is no requirement that Nash County purchase the Water Lines, but if Rocky Mount does not receive Nash County's Notice of Purchase within thirty-six (36) months of the Effective Date of this Agreement Nash County's right to purchase the Water Lines shall lapse, this Agreement shall terminate, and neither party shall thereafter have any rights or obligations under this Agreement.

6. **CONVEYANCE OF EASEMENTS.** Rocky Mount agrees to convey to Nash County all of its rights, title, and interest in and to any and all easements located along or appurtenant to the Water Lines (the "Easements"). It is understood and agreed that Rocky Mount will convey only the rights, title, and interest that it has in and to the Easement and that Rocky Mount expressly disclaims any and all representations or warranties with respect to the same, including without limitation, the ownership of the Easement or that the same will be suitable for Nash County's intended use or purposes.

7. **WATER AND SEWER BILLING.**

a. As of the Effective Date, certain customers in and around the Town of Dortches, including the Interstate 95 rest area, are billed for sewer usage based on the reading on the water meter vault located at the intersection of N. Halifax Road (S.R. 1544) and N.C. Highway 43 (Dortches Boulevard). It is contemplated by the parties that upon Nash County's purchase of the Water Lines, Nash County may move said water meter vault from its current location. In that event, Nash County will install a flow meter at the lift station located on Browntown Road, or some other suitable location mutually agreeable to the parties, to facilitate reading of the sewer usage of those certain customers in and around the Town of Dortches, including the Interstate 95 rest area. Upon Nash County's purchase of the Water Lines as set forth herein, the Interstate 95 rest area shall be a customer of the Northern Nash Water System and shall be billed for water and sewer usage accordingly.

8. **AMENDMENT OF MASTER WATER PURCHASE AGREEMENT.** Upon Nash County's purchase of the Water Lines, Nash County and Rocky Mount agree that the 2006 Water Purchase Agreement shall be amended (the "Amended Agreement") to incorporate the provisions of the Dortches Water Agreement and to increase the current allocation under the 2006 Water Purchase Agreement by 70,000 gallons per day (gpd) for the proposed Northern Nash Water System. The allocations and minimum purchase requirements under the Amended Agreement will be as follows:

	<u>Allocation</u>	<u>Minimum Purchase</u>
2006 Water Purchase Agreement	450K GPD	100K GPD
Dortches Water Agreement	45K GPD	-
Increase in allocation for NNWS	70K GPD	-
Totals for Amended Agreement	565K GPD	215K GPD (100+45+70)

The parties agree that the Amended Agreement will need to address the second point of delivery and shall include such additional terms and provisions as are mutually agreeable between the parties. Nash County and Rocky Mount agree to work in good faith to develop the Amended

Agreement. While the Dortches Wholesale Water Purchase Agreement executed in January 1985 will be allowed to expire once the proposed amendment to the Nash County 2006 Wholesale Water Purchase Contract takes effect, the Dortches Wholesale Wastewater Agreement executed in January 1985 shall continue in full force and effect.

9. **NOTICE.**

a. Whenever notice or information is to be furnished by Rocky Mount to Nash County, it shall be in writing and personally delivered or mailed to Nash County, 120 West Washington Street, Nashville, North Carolina 27856, Attn: Zee Lamb, County Manager.

b. Whenever notice or information is to be furnished by Nash County to Rocky Mount, it shall be in writing and personally delivered or mailed (certified mail, return receipt requested) to City of Rocky Mount, P.O. Box 1180, Rocky Mount, North Carolina 27802, Attn: Director of Public Works & Water Resources.

10. **FURTHER ASSURANCES.** The parties agree to cooperate with each other, and take such other and further actions, and execute and deliver such documents as may be reasonably requested by the other party to effectuate the purposes of this Agreement.

11. **ATTORNEY'S FEES.** Nash County will pay the law firm of Battle, Winslow, Scott & Wiley, P.A. its reasonable attorney's fees incurred in the preparation of this Agreement and any other documents related to transfer of ownership of the Water Lines to Nash County. Rocky Mount shall be responsible for payment of its own attorney's fees.

12. **GENERAL PROVISIONS.**

a. This Agreement shall be construed, performed, and enforced in accordance with the laws of the State of North Carolina

b. This Agreement constitutes the entire agreement between the parties and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements and agreements heretofore entered into between the parties are merged herein.

c. The failure of either party to enforce at any time any of the provisions of this Agreement; or to require performance of any of the provisions hereof, shall not be construed as a waiver of such provisions, nor affect the validity of this Agreement or any part hereof; or affect the right of such party thereafter to enforce each and every such provision.

d. This Agreement may not be changed orally, but only by a written agreement signed by both parties.

e. If any portion of this Agreement is declared invalid or unenforceable by any court of competent jurisdiction by final and non-appealable order, the remaining provisions of this Agreement shall not be affected and shall remain in full force and effect. In such event, the parties

shall promptly renegotiate the terms of this Agreement to restore this Agreement as nearly as possible to its original intent and effect.

f. This Agreement shall not be assigned or transferred without the prior written consent of both parties.

g. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

WHEREFORE, each of the parties hereto has caused this Agreement to be executed by its duly authorized representatives as of the dates set forth below.

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[SIGNATURE PAGES FOLLOW]

**SIGNATURE PAGE
FOR
WATER LINE PURCHASE AGREEMENT**

CITY OF ROCKY MOUNT

By: David W. Combs
David W. Combs, Mayor


Date: JANUARY 28, 2019

ATTEST:

Pamela O. Casey
Pamela O. Casey, City Clerk

**SIGNATURE PAGE
FOR
WATER LINE PURCHASE AGREEMENT**

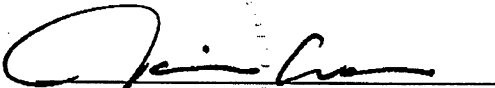
NASH COUNTY

By: 

Robbie B. Davis, Chairman,
Nash County Board of Commissioners

Date: 2-4-2019

ATTEST:



Janice Evans, Clerk to the
Board of Commissioners