

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is entered into the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between **THE CITY OF CREEDMOOR** ("Creedmoor") and **THE SOUTH GRANVILLE WATER AND SEWER AUTHORITY** ("SGWASA") and provides as follows:

### WITNESSETH:

WHEREAS, SGWASA is a water and sewer authority organized under and by virtue of Article I, Chapter 162A of the North Carolina General Statutes;

WHEREAS, SGWASA was formed to take ownership of the water and sewer distribution system formerly owned by the State of North Carolina serving the Butner Reservation and certain parts of Granville County, including Creedmoor and Stem (the "Butner Utilities System");

WHEREAS, SGWASA took control of the Butner Utilities System pursuant to the terms of Session Law 2006-159;

WHEREAS, the parties hereto believe that their ability to modernize and grow the capacity of their respective systems will be enhanced by a regional approach pursuant to which SGWASA owns and operates all aspects of Creedmoor's system and SGWASA and its member governments can combine their political clout and efforts to present a united front when addressing water and sewer issues of importance to southern Granville County;

WHEREAS, SGWASA has the necessary expertise to operate the system owned by Creedmoor and considerable efficiencies would be gained by a consolidated operation; and

WHEREAS, the parties hereto agree that Creedmoor will transfer all right, title, and interest in and to all of the assets of the ~~its~~ water and sewer system (the "System") to SGWASA; and

WHEREAS, the parties acknowledge that SGWASA serves a region of the state which has experienced growth and that the future capacity to serve the future development in Creedmoor and the region is of the utmost priority.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound hereby agree as follows:

### ARTICLE I. PURCHASE AND SALE

**1.1 Purchase and Sale.** As more particularly described elsewhere herein below and subject to the payment to Creedmoor by SGWASA of the sum of \$15,675,000.00 (which obligation shall be contingent upon SGWASA's ability to obtain financing for said payment within the Investigation Period described in Section 2.2 below), Creedmoor agrees to sell, transfer, assign, convey and deliver to SGWASA, and SGWASA agrees to purchase, acquire and accept from Creedmoor, all right, title and interest in and to all assets of ~~Creedmoor related to or used in connection with~~ the System of every kind

and type, tangible and intangible, real and personal as described herein (collectively, the "Assets"), free and clear of all encumbrances, mortgages, pledges, liens, security interests, obligations and liabilities (except as set out on **Schedule 1.1(a)**) which Assets include certain rights in the Real Property described in **Schedule 1.1(b)** and, without limitation, the following personal property:

(A) All equipment, machinery, furniture, furnishings, appliances, materials, parts and other tangible personal property of every description and kind except as excluded in Section 1.2 below and all replacement parts used in connection with the System, including but not limited to the items described on **Schedule 1.1(c)**;

(B) All inventory of goods and supplies, parts and materials, used or maintained in connection with the System;

(C) All other records related to the System and all manuals, books and records used in operating the System, including, without limitation, records, files, manuals, computer files, customer records and customer accounts. Creedmoor certifies that all such customer records and accounts will be up to date, accurate and have been maintained in accordance with applicable law;

(D) To the full extent transferable, all licenses, permits, registrations, certificates, consents, accreditations, and approvals necessary to operate the System as listed in Schedule 1.2(d), together with assignments thereof, if required, and all waivers that Creedmoor currently has, of any requirements pertaining to such licenses, permits, registrations, certificates, consents, accreditations, and approvals;

(E) All warranties (express or implied) and rights and claims related to the Assets or the operation of the System;

(F) All contract and leasehold rights and interests pursuant to contracts for purchase or lease of personal property, contracts for purchase, sale or lease of equipment, goods or services currently furnished or to be furnished in connection with the System and that are expressly assumed by SGWASA. It is understood and agreed that all leases for personal property related to the System (i.e. equipment, etc.) shall be free and clear of future payments as of the Transfer of Business Date ("TOB Date"), as defined below, except as set out on **Schedule 1.1(e)**;

(G) All intangible and intellectual property owned, leased, licensed or possessed by Creedmoor and utilized in connection with the System, and all derivatives thereof; and

(H) All rights under any Inter-Basin Transfer Application or agreement with any party to receive water or sewer capacity from the City of Oxford, located in Granville County, North Carolina, or any other person whatsoever including, but not limited to, any individual, corporation, trust, partnership, limited liability company or other entity, any political subdivision, any body politic and corporate, or any other source whatsoever ("Person").

**1.2 Excluded Assets.** Creedmoor is not transferring and SGWASA is not accepting or assuming obligations with respect to the following:

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- (A) Any records that Creedmoor is required by law to retain in its possession provided, however, SGWASA shall have the right to obtain copies of any such records reasonably necessary, in SGWASA's opinion, for the efficient operation of the System;
- (B) All cash (except customer deposits), rolling stock, equipment not designed to be used solely in connection with the provision of water and sewer services, accounts payable existing on or before the TOB Date, and accounts receivable arising on or after 12:00 a.m. on the TOB Date;
- (C) Any nutrient allocation for discharge into the Tar-Pamlico Basin (the "Tar-Pam Allocation"), provided, however, SGWASA shall have a right of first refusal to purchase said Tar-Pam Allocation on the terms set out in **Schedule 1.2(C)**.
- ~~(D)~~ Creedmoor's waste water lagoon, water treatment plant, maintenance shop, and Lake Rogers.
- ~~(D)~~(E) All right, title and interest in the real estate on Hester Road and Cannady Mill Road associated with the Creedmoor application for funding for a wastewater treatment facility together with all applications, studies and data thereto pertaining.

**1.3 Wireless Telecommunications Leases.** Creedmoor shall retain all income from any and all wireless telecommunications devices currently located on any Creedmoor water tank until such time as SGWASA shall construct at its own cost and expense a free standing monopole wireless telecommunications facilities tower with a similar carrying capacity for wireless devices as the existing Creedmoor water tank upon which wireless telecommunications devices are currently located and all wireless telecommunications devices now located upon the Creedmoor water tank are relocated to said monopole tower. SGWASA will not compete with said monopole tower for the location of future wireless collocations, but will be free to lease space on the water tank to wireless providers once the capacity of the monopole tower is exhausted. Creedmoor shall provide real property suitable for the construction for said monopole tower in the vicinity of the existing water tank upon which such wireless telecommunications devices are currently located provided, however, said locations shall not interfere with the operation of any water tank. Creedmoor will assist SGWASA with communications with any tenants, licensees, or other persons occupying space on any existing water tank and will execute such documents as may reasonably be necessary in connection with the relocation of any existing wireless devices currently located on any water tank. The obligations contained in this Section 1.3 shall survive Closing.

**1.4 Effective Date.** The Effective Date shall be the date this Agreement is executed by both parties.

**1.5 Transfer of Business Date.** The TOB Date is the date on which all of Creedmoor's right, title, and interest to operate the System Assets is transferred to SGWASA. The TOB Date shall be July 1, 2014.

## **ARTICLE II. INVESTIGATION PERIOD/TITLE EXAMINATION**

**2.1 Investigation Period; Title Examination and Survey Period.** From the Effective Date through the period ending at 5:00 p.m. 180 days thereafter ("Investigation Period"), SGWASA and

SGWASA's representatives shall have full and complete access to all documents, information and records relating to the System.

(A) During the Investigation Period and upon at least twenty-four (24) hours prior notice, SGWASA and SGWASA's agents or designees shall have the right to enter the Real Property for purposes of performing such investigations and other inquiries, tests and evaluations as SGWASA deems reasonably necessary, including economic and legal analysis, securing environmental and engineering reports and performing such other reasonable and customary due diligence as SGWASA elects to perform (the "Investigation"). SGWASA's Investigation may include a Phase I Environmental Assessment (but not a Phase II Environmental Assessment without Creedmoor's prior written consent) of the Real Property as well as soil and other geo-technical tests and evaluations, subject to the limitations set forth below. Creedmoor and its representatives shall have the right to observe any testing being done. SGWASA shall repair any damage to the Real Property arising out of SGWASA's or its agents' or representatives' actions under this Section, specifically including backfilling any holes dug at the Real Property, to substantially the same conditions that existed prior to the investigation. SGWASA shall conduct its investigation at its sole expense. If during the Investigation Period SGWASA shall, in its sole discretion, determine that for any reason related to the System, including title to the assets, that it does not desire to close, then, upon written notice to Creedmoor to that effect, postmarked before expiration of the Investigation Period, this Agreement shall terminate.

(B) Creedmoor shall, upon SGWASA's request, promptly make available to SGWASA all documentation, records and information relating to the System reasonably requested by SGWASA, and in Creedmoor's possession, in connection with SGWASA's investigation. Within fourteen (14) business days of the Effective Date, Creedmoor shall deliver to SGWASA a copy of any of the following documents relating to the Business which are in Creedmoor's possession: (i) environmental reports; (ii) the latest dated surveys; (iii) the deeds conveying the Real Property to Creedmoor; and (iv) the latest title insurance policy and/or commitment. In addition and within said period consisting of fourteen (14) business days of the Effective Date, Creedmoor shall make available to SGWASA all of the information listed in Section 6.1(A)-(W).

(C) If for any reason SGWASA does not acquire the System, then SGWASA shall not disclose the results of its investigation to any third party without Creedmoor's prior written consent, except as may be required by law.

(D) SGWASA agrees to protect, defend, indemnify and hold Creedmoor harmless from any loss, cost, expense or liability incurred or sustained by the claim of any person made by reason of investigations conducted by SGWASA or its agents or contractors. Notwithstanding the foregoing, SGWASA shall not be obligated to defend or otherwise indemnify Creedmoor, nor to repair any damage to the Real Property attributable in whole or part to any one or more of the following: (i) the discovery of any hazardous materials on the Real Property or elsewhere in the System; (ii) any pre-existing latent defect in the Real Property; (iii) the spread of any hazardous materials already present on the Real Property despite the use of reasonable care by SGWASA and its employees, agents and contractors; or (iv) the acts or omissions of Creedmoor. This indemnification shall survive Closing and any termination of this Agreement.

(E) During the Investigation Period, SGWASA may, at its sole cost and expense, cause a title examination to be made of the Real Property and may obtain a commitment for the issuance

of title insurance (the “Commitment”) by a title insurance company acceptable to SGWASA (the “Title Company”).

(F) SGWASA may obtain, at its sole cost and expense, a survey of any or all of the Real Property referenced herein by a surveyor(s) licensed in the State of North Carolina (the “Survey(s)").

(G) SGWASA shall have until the end of the Investigation Period to examine the Commitment and the Survey(s). If SGWASA finds any objectionable matters in such Commitment or on such Survey(s) (each an “objectionable condition”), and if SGWASA has not otherwise terminated this Agreement, then SGWASA shall notify Creedmoor in writing of all of such objectionable conditions on or before the last day of the Investigation Period, and Creedmoor shall elect and notify SGWASA in writing, within ten (10) business days of SGWASA’s notice, to either cure any/all of such objectionable conditions, or to not cure any/all of such objectionable conditions. Creedmoor’s failure to so notify SGWASA shall be deemed to be Creedmoor’s election not to cure any of such objectionable conditions. If Creedmoor elects not to cure, then SGWASA shall within ten (10) business days give written notification to Creedmoor electing to either (i) accept the objectionable conditions, in which case they shall be “Permitted Exceptions” or (ii) terminate this Agreement in which case the parties shall have no further liability to each other under this Agreement except for SGWASA’s indemnity obligations set forth in Section (D) above and as elsewhere set out herein. SGWASA’s failure to give such notice to Creedmoor shall be deemed to be an acceptance of the objectionable conditions as permitted exceptions. Anything herein to the contrary notwithstanding and in all events, Creedmoor shall (i) cause to be discharged by Closing or at Closing any Deeds of Trust or other liens or indebtedness on or related to the Property and (ii) execute the title company’s affidavit (the “Lien Waiver”) confirming that no mechanics’ liens or materialmen’s liens or claims thereof have been or may be filed against the Real Property or, if Creedmoor cannot provide such confirmation, Creedmoor shall cause the title company to insure SGWASA’s title without any exception for mechanics’ or materialmen’s liens. The term “objectionable conditions” as used herein means conditions, things or matters relating to title to the Real Property and which, if not cured, would materially interfere with SGWASA’s title to the Real Property if purchased as herein provided.

(H) If Creedmoor elects to cure any objectionable conditions, Creedmoor shall thereafter cure all of such objectionable conditions prior to Closing. If Creedmoor elects to cure, but fails to cure, any objectionable condition at or prior to Closing, SGWASA may either (i) cure such condition itself and deduct from the Purchase Price the reasonable costs and expenses necessary to cure such objectionable condition and/or incurred by SGWASA in curing the same, (ii) waive the objectionable condition and proceed to close the transaction contemplated by this Agreement with no reduction in the purchase price relating to the uncured objectionable condition(s), or (iii) terminate this Agreement as set out herein and in which event the parties shall have no further rights, obligations or liabilities to each other under this Agreement, except for SGWASA’s indemnify obligations set forth in Section (D) above.

**2.2 Financing Contingency.** SGWASA contemplates obtaining third-party financing to obtain the Purchase Price (the “Financed Amount”) as described hereinabove. Creedmoor agrees to cooperate with SGWASA and its third-party financing sources so as to reasonably allow the third-party financing sources selected by SGWASA to complete their underwriting process and to allow SGWASA to close using the third-party financing source it ultimately selects for the financing. SGWASA shall, by

the end of the Investigation Period, obtain a lender's commitment to provide funding for the Financed Amount satisfactory to SGWASA and appropriate documentation showing that the proposed financing has been approved by the Local Government Commission. If SGWASA fails to obtain said commitment or such Local Government Commission approval, then either party may terminate this Agreement.

### ARTICLE III. RESPONSIBILITIES OF PARTIES FOLLOWING TRANSFER

**3.1 Responsibility for Operation of System Assets.** Upon the TOB Date, SGWASA shall assume immediate and sole duty and responsibility for financing; operating; maintaining; improving; and expanding the System. After the TOB Date, the System shall be fully incorporated into the water and sewer system operated and maintained by SGWASA. Said duty and responsibility shall be in accordance with current and future policies, standards, and procedures of SGWASA, and shall be applied in the same extent and in the same manner as applied to other direct customers of SGWASA's water and sewer utility system ("Direct Customers").

**3.2 Right to Operate.** Creedmoor hereby irrevocably grants to SGWASA the right to design, construct, operate, maintain and perform all related activities required to operate, maintain, expand, upgrade and improve the System in accordance with SGWASA's water and sewer utility system standards and policies for operation and performance, level of service, reliability, and redundancy. Said Right to Operate includes the encroachment authority for SGWASA to operate in all public rights-of-way over which Creedmoor has the sole authority or joint authority with the North Carolina Department of Transportation. Said water and sewer utility system standards and policies shall be applied in the area comprising the System on the TOB Date to the same extent and in the same manner as applied to other Direct Customers of SGWASA's water and sewer utility system.

**3.3 Notices of Violation.** In the event that fines or penalties are levied by the State of North Carolina for violation of System permits following the TOB Date based on acts or omissions that occur after the TOB Date, such fines or penalties for notices of violations will be paid by SGWASA. Any fines or penalties for acts or omissions prior to the TOB Date will be paid by Creedmoor and Creedmoor will protect, defend, indemnify and hold SGWASA harmless therefrom.

**3.4 Rates, Fees, Charges, and Penalties.** SGWASA shall have the sole responsibility and authority to establish and set rates, fees, charges, and penalties necessary for the operation, maintenance, upgrade, improvement, and expansion of the System. It is intended that the expansion, upgrade, improvement, operation and maintenance of the water and sewer system shall be on a self-sustaining basis. All revenues of the SGWASA water and sewer utility shall be used exclusively by the water and sewer utility fund for direct and indirect costs of the water and sewer utility operations.

**3.5 Provision of Specific Water Services.** It is SGWASA's current policy to provide, at no charge within its service area to political subdivisions which request it, routine meter pressure testing and hydrant flow tests. Further, it is SGWASA's current policy to waive volume charges for fire departments within its service area for training and firefighting. SGWASA will treat Creedmoor in the same manner as the other political subdivisions within its service area with respect to the matters contained in this Section 3.5.

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### ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF ~~CREEDMOOR~~ THE PARTIES

**4.1 Representations and Warranties by Creedmoor.** Creedmoor makes the following representations and warranties to SGWASA:

(A) Creedmoor is the sole owner of the System including all water and sewer lines, pipes, meters, valves, meter boxes, laterals, and any other property transferred to SGWASA under the terms and conditions of this Agreement, and

(B) Said System and its components, including but not limited to, all facilities, property, land, equipment, information, and data are free and clear of all encumbrances except as set out in **Schedule 1.1(a)**, which encumbrances shall be satisfied or released at Closing.

**4.2 SGWASA makes the following representation and warranty to Creedmoor:**

(A) SGWASA shall provide substantially the same level and quality of services to the residents of the City of Creedmoor as it does to its other customers.

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## ARTICLE V. TRANSFER OF PROPERTY

**5.1 Property Transfer.** At Closing, a Bill of Sale, General Warranty Deed, Deed(s) of Easement(s) and such other assignments, affidavits or other documents reasonably necessary to transfer the assets of the System to SGWASA, shall be executed by Creedmoor such that following said execution and delivery ownership of all facilities, property, land, easements, equipment, financial assets, information, and data subject to this Agreement are transferred to SGWASA. Such documents shall be sufficient to convey to SGWASA all of Creedmoor's right, title, and interest in the System as shown on **Schedules 1.1(b) and 1.1(c)**, including easements and rights-of-way, whether or not recorded. A General Warranty Deed shall be executed by Creedmoor to convey all interests in real property and improvements thereto which are subject to this Agreement.

Creedmoor shall cooperate with SGWASA in establishing title to any portion of the System where ownership may be contested.

The parties will work together in good faith to generate a detailed list of real property and easements and encroachment agreements.

**5.2 Easements and Encroachments.** Creedmoor has fully executed and properly recorded easements and encroachment agreements for portions of the System. The parties will cooperate to develop a complete list of all recorded easements and encroachment agreements as stated above. To the extent possible, all easements for the System shall be conveyed by Creedmoor to SGWASA by an appropriate instrument suitable for recording in the Office of the Register of Deeds for Granville County, North Carolina. As a condition of this Agreement, Creedmoor will provide SGWASA with copies of any encroachment agreements it has with the North Carolina Department of Transportation and with any other utility companies. Creedmoor shall retain the right to use any such easements or rights of way for ~~recreational~~ purposes not inconsistent with SGWASA's use. SGWASA shall have the right to determine, in its reasonable discretion, what uses are inconsistent with SGWASA's use. For the purposes hereof, uses "inconsistent with SGWASA's use" specifically include any uses which might reasonably be expected to damage SGWASA's transmission and collection infrastructure and related appurtenances and any location by any other party of water and sewer transmission and collection infrastructure and related appurtenances in the easement. Uses of the easements for greenways, trails,

and other recreational uses will be permitted when such uses are not other inconsistent with SGWASA's use.

**5.3 Division of Revenue and Expenses.** All revenues from billing statements issued by Creedmoor in the ordinary course of business prior to the TOB Date shall belong to Creedmoor. From and after the TOB Date Creedmoor shall accept no further payments from customers (but "payments from customers" shall not include sums received from collection agencies or the North Carolina Local Government Debt Setoff Clearinghouse) and all such payments shall be made to SGWASA. Any payments made to SGWASA by former Creedmoor customers after the TOB Date will be credited first towards the oldest charge showing on the customer's account. All such sums collected which relate to bills sent by Creedmoor prior to the TOB Date shall be remitted to Creedmoor by SGWASA within 30 days after the end of the calendar month in which they are received along with an accounting documenting the payment by SGWASA to Creedmoor for said sums. The foregoing notwithstanding, any revenue collected by SGWASA more than 90 days after the TOB Date shall belong to and remain with SGWASA. All revenues from billing statements issued by SGWASA on or after the TOB Date shall belong to SGWASA. Any expenses incurred by Creedmoor with respect to the System prior to the TOB Date shall be the responsibility of Creedmoor and Creedmoor shall protect, defend, and hold SGWASA harmless therefrom. All expenses arising on or after the TOB Date incurred by SGWASA shall the responsibility of SGWASA and SGWASA shall protect, defend and hold Creedmoor harmless therefrom.

## ARTICLE VI. RECORDS TRANSFER

**6.1 Records Transfer.** At the time set out below, Creedmoor shall transfer to SGWASA all available reproducible and electronic copies of any and all records, data, information, and models arising from the construction, operation and maintenance of the System and any other related activity, including projects in progress, and including, but not limited to, the following:

- (A) Construction contracts, drawings, maps, and all other related documents evidencing the condition or location of any portion of the subject water and sewer systems including such documents as may be in the possession of any engineer or other consultant of Creedmoor;
  - (B) Billing, collection and payment records on all present customers of the subject water and sewer systems;
  - (C) An accurate tabulation or listing of all actual service locations in the System to be transferred to SGWASA from Creedmoor, to include:
    - 1) Address - Number and Street;
    - 2) Account Name (if active);
    - 3) Billing Address for Each Account Number;
    - 4) Account Numbers, all meter reading books, the history of all accounts, and such other information as Creedmoor may gather concerning active and inactive accounts for the past twenty-four (24) months;
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- 5) Meter Location Description;



- (D) Contracts or agreements for the supply of equipment, materials, supplies, and products;
- (E) Pending applications for water and sewer service;
- (F) Contracts or agreements to provide water and or sewer service currently in effect;
- (G) Receipts, accounts and other records of deposits made by all present and past customers of the subject water and sewer systems;
- (H) Any and all warranty information on any facilities, property, land, and equipment transferred to SGWASA pursuant to this Agreement;
- (I) Repair, maintenance, trouble, and emergency response records for all portions of Creedmoor's water and sewer systems;
- (J) Any and all notices of violation, legal actions, and lawsuits pertaining to Creedmoor's water and sewer system;
- (K) Plans, permits, reports, specifications, surveys, etc., for ~~water and sewer facilities and operations~~the System;
- (L) Number and locations of all unmetered services;
- (M) Copies of all water and sewer system maps;
- (N) Copies of all easements;
- (O) Copies of all encroachment agreements;
- (P) Identification of all Creedmoor's customers;
- (Q) Record of all assessments for system extensions;
- (R) Identification of all taps for which payment has been made;
- (S) Identification of all backflow prevention installations;
- (T) Identification of all Pretreatment Program installations;
- (U) Copies of such records as are necessary to inform SGWASA of the location of all facilities of Creedmoor's for other utility operations;
- (V) Any other information, data, and records pertaining to Creedmoor's water and sewer utility; and
- (W) Communication Tower Agreements.

Creedmoor agrees that on or prior to the TOB Date, Creedmoor shall submit to SGWASA such accounting, commercial, engineering, planning, personnel, and facility records pertaining to the System in such format(s) (electronic, hard copy, or both) as SGWASA reasonably may request. SGWASA shall bear any costs of creating or converting such records from the format maintained by Creedmoor. Creedmoor may make copies of said materials for Creedmoor's records and archives. Creedmoor's Mayor and the Executive Director of SGWASA, or their designees, shall determine mutually satisfactory administrative details for the transfer of the above-referenced records.

## ARTICLE VII. CUSTOMER TRANSFERS

**7.1 Customer Transfer.** As of the TOB Date, all customers and users of the System shall become subject to all rules, regulations and ordinances of SGWASA as the same apply to all other Direct Customers and customers of SGWASA, and as same are now or may hereafter be amended. Such rules, regulations and ordinances and schedule of rates, fees, charges and penalties shall constitute a part of the Agreement between SGWASA and any customer or user of the subject water and sewer system and any extensions thereof for the provision of water and sewer service.

Creedmoor's designees and SGWASA staff shall develop a seamless transfer of customer accounts at TOB Date in order to provide continuity of account activity on or after the TOB Date.

**7.2 Customer Deposits.** Customer deposits shall be accounted for and transferred to SGWASA and shall be managed by SGWASA in the same manner as it manages its own customer deposits.

**7.3 Billing.** All services provided by SGWASA to Creedmoor's customers on and after the TOB Date shall be provided by SGWASA at the same rates SGWASA charges its other Direct Customers.

**7.4 Discriminatory Agreement Disclaimer.** No existing special, discriminatory agreements with specific customers will be continued, honored, or assumed by SGWASA. Creedmoor represents and warrants to SGWASA that there are no discriminatory agreements between Creedmoor and any customer or user of the System which will or may survive this Agreement and be binding upon SGWASA. For purposes of this Agreement, a discriminatory agreement is any agreement, contract or other understanding between Creedmoor and any customer or user of the System that provides that:

(A) Water and sewer service be extended and provided in a different manner than such service is extended and provided to the other customers or users of Creedmoor's water and sewer system as to quality, quantity, or any other aspect of extending and providing such service;

(B) Water and sewer service be extended and provided upon the payment of a different schedule of rates, fees, charges, or penalties than is imposed upon the remaining customers or users of Creedmoor's water and sewer system;

(C) Water and sewer service be extended and provided at a different cost or schedule for reimbursement of costs or any other aspect of paying for the extension and provision of water and sewer service than is imposed upon the remaining customers or users of Creedmoor's water and sewer system.

In the event that an unlawful discriminatory agreement exists and survives this Agreement, and is determined to be binding upon SGWASA, Creedmoor shall indemnify and hold SGWASA harmless from any and all demands, claims, or actions (including the reasonable costs, expenses and attorney fees incurred by SGWASA), of such discriminatory agreement. Further, Creedmoor shall indemnify and hold SGWASA harmless from any and all demands, claims, or actions, without regard to the relief sought or awarded and without regard to whether the claim, demand or action is raised by a party to the discriminatory agreement.

## ARTICLE VIII. PERMITS

**8.1 Environmental Permits.** Creedmoor's Manager or person designated by the Creedmoor City Commissioners shall cooperate with SGWASA in securing the issuance and/or transfer of all

**Comment [JW1]:** Creedmoor indicated that it has discriminatory agreements in place. We believe, but do not know, that the agreements that Creedmoor is concerned about are development agreements, connection agreements, etc. that are allowed by statute. SGWASA is very concerned that actual discriminatory agreements could cause it to violate its bond covenants and agreements with other parties. We request that Creedmoor disclose any agreements about which it may be concerned for review and so that the parties can determine how to treat those agreements in this Agreement.

permits necessary for the operation of the System from the North Carolina Department of Environment and Natural Resources (“DENR”) and all other permits and other legally necessary approvals for the operation of the System (the “Approvals”). Said permits are listed in Schedule 8.1. Until all Approvals have been obtained by or transferred to SGWASA, Creedmoor shall designate and authorize a certain person or persons with credentials and certifications suitable to DENR to execute all necessary reports, permits, or other legally required documentation necessary for the operation and maintenance of the System and said person shall assist SGWASA to the extent necessary for the successful operation and maintenance of the System. In the event that there is a delay in receiving any Approvals, the date and time of Closing and the TOB Date shall be extended until a mutually agreed upon time not later than thirty (30) days following the receipt of all such necessary Approvals.

#### **ARTICLE IX. CREEDMOOR’S ADMISSION AS A MEMBER OF SGWASA**

Effective immediately upon Closing, SGWASA consents to Creedmoor joining SGWASA following the statutory procedures set out in N.C. Gen. Stat. §162A-4. At Creedmoor’s election, any public hearings required to be held by Creedmoor may be held prior to Closing provided, however, SGWASA’s consent to Creedmoor joining the Authority shall be contingent upon the Closing contemplated herein. Upon Creedmoor joining SGWASA, it shall have the right to appoint two members who shall have all the statutory rights and duties set out in Article I, Chapter 162A of the North Carolina General Statutes. SGWASA agrees that it will not voluntarily alter the number of members on its board prior to Creedmoor joining SGWASA.

#### **ARTICLE X. ALLOCATIONS; SGWASA SOLE SOURCE**

**10.1 Allocations.** From and after the TOB Date, Creedmoor shall have no authority to grant allocations to any Person and shall retain no allocation in its own name. From and after the Effective Date, SGWASA shall have the right to review and approve any allocations made by Creedmoor. Further, within ten (10) days of the effective date, Creedmoor shall provide to SGWASA an accounting of all allocations outstanding or committed as of the Effective Date.

**10.2 Allocation Policy Following Closing.** Following Closing, SGWASA with full participation from Creedmoor’s members will develop an allocation policy general along the lines set out in **Schedule 10.2** pursuant to which each participating political subdivision has a reserved allocation of water and sewer capacity which it knows it can use for planning purposes and to recruit business and industry.

**10.3 SGWASA Sole Source.** From and after the Closing, SGWASA shall be Creedmoor’s sole provider of water and sewer capacity and services. This provision is a material term of this Agreement and shall survive Closing.

**10.4 SGWASA’s Obligation to Seek New Sources of Capacity.** SGWASA agrees that it has the duty and obligation to provide for the reasonable water and sewer capacity needs of its participating political subdivisions. SGWASA agrees that it will begin seeking (1) new sources of total nitrogen mass allocation; (2) wastewater treatment sources, or (3) technological improvements or operating efficiency improvements to achieve greater discharges within its annual total nitrogen mass allocation, prior to

using more than 80% of its annual total nitrogen mass allocation for any one calendar year. Prior to exceeding 90% of its annual total nitrogen mass allocation for any one calendar year, SGWASA shall obtain all permits needed for (i) making any needed technological improvements to its wastewater treatment system, (ii) implementing any operating efficiency improvements to its wastewater treatment system or processes, (iii) beginning the expansion of its wastewater treatment system including the constructing of new facilities, or (iv) the acquiring treatment capacity from other parties. The parties stipulate that based upon current permitted capacity, the thresholds for such allocations are calculated as shown on Schedule 10.4.

## ARTICLE XI. EMPLOYEE TRANSFER

**11.1 Transfer of Employees.** All designated staff of Creedmoor's water and sewer utility system will be offered employment with SGWASA upon such terms and conditions that shall be determined by SGWASA. Such Creedmoor employees accepting positions with SGWASA will suffer no loss of salary or sick leave. SGWASA will accept any vacation leave on Creedmoor's books for any employee who agrees to transfer such leave to SGWASA subject to the terms of Section 11.2 below. SGWASA and Creedmoor both participate in the Local Governmental Employees Retirement System ("LGERS") and it is anticipated that Creedmoor employees hired by SGWASA will suffer no adverse impact on their LGERS retirement as a result of a change in employer.

**11.2 Fund Transfers for Approved Employee Benefits.** Creedmoor will transfer funds on a dollar for dollar basis sufficient to pay for (1) all accrued vacation leave for each employee who chooses to transfer said vacation leave as set out above and (2) sick leave for each transferring employee. Information relative to the total number of hours of accrued vacation and sick leave will be provided to SGWASA during the Investigation Period.

## ARTICLE XII. MISCELLANEOUS

**12.1 Amendments.** This Agreement may be amended from time to time by mutual agreement of the parties made in writing.

**12.2 Severability.** In the event any article of this Agreement or any part thereof shall be found to be illegal, invalid or unconstitutional, the remaining sections shall not, in any way, be affected.

**12.3 Assignment.** Except as provided herein, this Agreement may not be assigned by either party without the express written consent of the other.

**12.4 Termination.** This Agreement may be terminated as follows:

(A) By mutual consent of the parties hereto.

(B) By Creedmoor: (i) in the event any of the transactions contemplated by this Agreement have been prohibited or enjoined by reason of any final judgment, decree or order entered or issued by a court of competent jurisdiction in litigation or proceedings involving either SGWASA or Creedmoor; or (ii) in the event SGWASA breaches or violates any material provision of this Agreement or fails to perform any material covenant or agreement to be

performed by SGWASA under the terms of this Agreement and such breach, violation or failure is not cured prior to Closing or waived by Creedmoor at or prior to Closing.

(C) By SGWASA: (i) in the event the transactions contemplated by this Agreement have been prohibited or enjoined by reason of any final judgment, decree or order entered or issued by a court of competent jurisdiction in litigation or proceedings involving either SGWASA or Creedmoor; (ii) in the event Creedmoor breaches or violates any material provision of this Agreement or fails to perform any material covenant or agreement to be performed by either under the terms of this Agreement and such breach, violation or failure is not cured prior to Closing or waived by SGWASA at or prior to Closing; (iii) in the event SGWASA is unable to obtain the necessary licenses and/or permits from the North Carolina Department of Environment and Natural Resources to operate the Merged System; or (iv) SGWASA determines, in its reasonable discretion, that the transactions contemplated hereby will cause it to be out of compliance with the covenants contained in its bond indenture or the terms of any other financing arrangement it may have entered into prior to the TOB Date.

**12.5 Binding Nature of this Agreement.** This Agreement shall be binding on the parties, their successors and assigns.

**12.6 Beneficiaries.** Except as herein specifically provided otherwise, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to Creedmoor and SGWASA. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Creedmoor and SGWASA that any such person or entity, other than Creedmoor and SGWASA, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

**12.7 Survival of Promises.** All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Closing unless specifically provided otherwise herein, or unless superseded by applicable statutes of limitation.

**12.8 Time of the Essence.** Time is of the essence in the performance of this contract.

**12.9 Remedies.** In the event of the breach of terms of this Agreement, the parties shall be entitled to all remedies available at law and in equity including specific performance of the terms of this Agreement.

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**12.910 Notice.** Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed given (unless otherwise stated herein) as of (a) the date it is delivered by hand to the parties listed below; (b) the date three days following the date it is deposited in the mail, postage prepaid, return receipt requested, addressed to the parties listed below; or (c) the date three days following the date it is sent, shipping prepaid, return receipt requested, by a national courier service, addressed to the parties listed below:

CREEDMOOR:

Attn: Town Manager  
P.O. Box 765 (mail)  
111 Masonic Street (delivery)  
Creedmoor, North Carolina 27522

With a copy to:

Thomas L. Currin  
Currin & Dutra, LLP  
118 Main Street  
Oxford, North Carolina 27565

SGWASA:

Attn: Executive Director  
415 Central Avenue, Suite B  
Butner, North Carolina 27509

With a copy to:

James C. Wrenn, Jr.  
Hopper, Hicks, & Wrenn, PLLC  
P.O. Box 247 (mail)  
111 Gilliam Street (delivery)  
Oxford, North Carolina 27565

12.110 Cooperation. At all times prior to and following Closing, Creedmoor shall cooperate with SGWASA to effectuate the intent of the terms hereof. In furtherance of this provision, Creedmoor will execute such documents as may be reasonably necessary to transfer the assets of the System to SGWASA. Further Creedmoor shall cooperate in transferring utility service to pump stations and other matters necessary for the ongoing operation of the System.

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[SIGNATURES ON FOLLOWING PAGE]

South Granville Water & Sewer Authority, a  
Water and Sewer Authority organized under  
and by virtue of Article I, Chapter 162A of  
the North Carolina General Statutes

Attest: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Thomas W. Lane, Chair

City of Creedmoor, a municipal corporation  
incorporated under and by virtue of the  
laws of the State of North Carolina

Attest: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Darryl D. Moss, Mayor

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**SCHEDULE 1.1(a)**

All encumbrances, mortgages, pledges, liens, security interest, obligations and liabilities to be cancelled or otherwise satisfied at Closing:

All encumbrances, mortgages, pledges, liens, security interest, obligations and liabilities to be assumed by SGWASA at Closing:

**NONE**

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**SCHEDULE 1.1(b)**

Real Property to be transferred to SGWASA including but not limited to all pump stations, water towers, easements and rights of way more particularly described as follows:

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**SCHEDULE 1.1(c)**

All equipment, machinery, furniture, furnishings, appliances, materials, parts and other tangible personal property of every description and kind and all replacement parts used in connection with the system to be transferred to SGWASA:

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**SCHEDULE 1.1(d)**

All leases for personal property related to the System (i.e. equipment, etc.) to be assumed by SGWASA:

**NONE**

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**Schedule 1.2(C)**

GRANVILLE COUNTY  
NORTH CAROLINA

**RIGHT OF FIRST REFUSAL**

This Agreement is entered into this the \_\_\_ day of \_\_\_\_\_ 2013 by and between **THE CITY OF CREEDMOOR**, a municipal corporation organized under and by virtue of the laws of the State of North Carolina (“Creedmoor”) and **THE SOUTH GRANVILLE WATER AND SEWER AUTHORITY**, a water and sewer authority organized pursuant to Article 1, Chapter 162A of the North Carolina General Statutes (“SGWASA”) and provides as follows:

Whereas, Creedmoor and SGWASA entered into that certain “Asset Purchase Agreement” dated \_\_\_\_\_ (the “APA”) pursuant to which SGWASA contracted to purchase a water and sewer system from Creedmoor; and

Whereas, Section 1.2(C) of said APA specifically describes a right of first refusal to purchase certain nutrient allocation by Creedmoor as more specifically described in Exhibit “A” which is attached hereto and incorporated herein by reference (the “Nutrient Allocation”).

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. In the event that Creedmoor shall at any after the Closing contemplated in the Asset Purchase Agreement entered into by and between the parties hereto as of even date herewith desire to sell the Nutrient Credits pursuant to any bona fide written offer which it shall have received from an unrelated third party, it shall offer the Nutrient Credits in writing to SGWASA at the same price as that contained in such bona fide offer (the “Offered Price”) and shall provide to SGWASA a copy of said offer (the written offer from the Creedmoor to the SGWASA together with the copy of the bona fide offer from an unrelated third party shall hereafter be referred to as the “Notice of Intent to Sell”).

2. Creedmoor shall deliver to SGWASA the Notice of Intent to Sell at the address shown below or such other address as SGWASA may have designated in writing as described herein.

3. Within sixty (60) days of receipt of said Notice of Intent to Sell, SGWASA will notify Creedmoor in writing of its intent (1) to exercise this Right of First Refusal to purchase the Nutrient Credits at the Offered Price or (2) to forfeit its right to exercise this Right of First Refusal. If SGWASA notifies Creedmoor that it does not intend to exercise this Right of First Refusal or SGWASA does not respond to the Notice of Intent to Sell within the time period set forth above, this Right of First Refusal shall be null and void and the parties shall have no further rights or responsibilities under this document. In the event that SGWASA fails to exercise its Right of First Refusal hereunder, ~~Creedmoor~~SGWASA, at the request of Creedmoor, shall a sign document reasonably satisfactory to the parties that this Right of First Refusal is null and void.

4. Closing of the purchase of the Nutrient Credits by SGWASA shall take place within sixty days following all steps necessary to transfer ownership of the Nutrient Credits to SGWASA taking place and SGWASA receiving reasonable adequate assurance that the North Carolina Department of Environment and Natural Resources or its successor agency, (“DENR”), the Tar-Pamlico Basin

Association (“TPBA”), and any other association, agency, or legal person having approval authority (“Other Approving Authorities”) have consented to the sale (collectively, DENR, TPBA, and “Other Approving Authorities”) are referred to as the “Approving Authorities”) and to SGWASA’s use of the Nutrient Credits to the extent such consent and approval is necessary, required, or desirable as determined in SGWASA’s reasonable judgment.

5. Closing of this transaction, including delivery to SGWASA of all necessary documentation transferring ownership shall take place at the offices of Hopper, Hicks & Wrenn, PLLC in Oxford, North Carolina or at such other location agreed upon by the parties hereto. Should the closing date fall upon a Saturday, Sunday, or legal holiday, the closing date shall be the day following the next calendar day that is not a Saturday, Sunday, or legal holiday.

6. COSTS OF CLOSING:

A. Each party shall bear the cost of its respective attorney's fees or other professional fees attributable to performing its obligations with respect to this transaction.

B. Creedmoor shall pay all costs necessary for curing any defects in title to the Nutrient Credits.

C. SGWASA shall pay all costs related to having ownership of the Nutrient Credits transferred to its name except any costs associated with curing defects in title or documentation of chain of ownership which costs shall be paid for by the Creedmoor.

D. Any costs, assessments, dues or other charges arising prior to the date of Closing shall be paid by Creedmoor and all any such costs, assessments, dues or other charges arising after the date of Closing shall be paid by SGWASA. Any costs, assessments, dues or other charges that relate to a time period beginning before and ending after closing shall be pro-rated.

9. At Closing, Creedmoor shall deliver to SGWASA such bills of sale, certificates, affidavits and other documents as may reasonably be required by SGWASA or any Approving Authority necessary to transfer title and ownership of the Nutrient Credits from Creedmoor to SGWASA.

10. During the term of this Agreement, Creedmoor shall not lease, rent or license (“Lease”) the Nutrient Allocation for more than a term of two years without the prior written approval of SGWASA. Any Lease shall be assigned to SGWASA and shall be reasonably satisfactory to SGWASA.

11. Creedmoor shall not contract to sell less than the entire Nutrient Allocation without SGWASA’s express written approval. In the event that SGWASA consents to the sale of a portion of Creedmoor’s Nutrient Allocation or SGWASA exercises its right of first refusal as set out herein for less than the entire Nutrient Allocation, then this Agreement shall remain in effect as to any portion of said Nutrient Allocation which Creedmoor retains.

12. All provisions of this Agreement are binding upon, inure to the benefit of, and are enforceable by and against the parties, successors and assign.

13. Except as otherwise stated herein, this document, including all exhibits attached hereto and incorporated herein, fully sets forth all agreements and understandings of the parties to this Agreement with respect to the subject matter hereof. No supplement, amendment, modification or alteration of this

Agreement shall be valid unless set forth in writing, and executed and dated by authorized representatives of both Creedmoor and SGWASA. This document supersedes all other previous written or oral negotiations, commitments or writings.

14. Notices shall be given as set out in the Asset Purchase Agreement.

15. This Agreement shall be governed by applicable laws of the state of North Carolina. Venue for any civil litigation or arbitration between the parties hereto arising out of or in any way relating to or resulting from this Agreement shall be Granville County, North Carolina. The parties irrevocably submit themselves to the jurisdiction of the state court sitting in Granville County, North Carolina having jurisdiction over said claim or claims.

16. Time shall be of the essence of each provision of this Agreement.

17. Whenever used herein, the singular shall include the plural, the plural and singular and any gender shall include all genders. Captions to the provisions of this Agreement are intended and used solely for the purposes of identification and do not limit or enlarge upon the written provisions of this Agreement.

18. If the date of closing or the date for delivery of a notice or performance of some other obligation of a party falls on a Saturday, Sunday or legal holiday in the state in which the Property is located, then the date of closing or such notice or performance shall be postponed until the next business day.

[SIGNATURES ON FOLLOWING PAGE]

**IN TESTIMONY WHEREOF**, Creedmoor and SGWASA have hereunto set their hands and seals the day and year first above written.

**CITY OF CREEDMOOR**

By: \_\_\_\_\_ (SEAL)  
Darryl D. Moss, Mayor

Attest:

\_\_\_\_\_  
Robin E. Reif, Clerk

**SOUTH GRANVILLE WATER AND SEWER AUTHORITY**

By: \_\_\_\_\_ (SEAL)  
Thomas W. Lane, Chair

Attest:

\_\_\_\_\_  
Beverly Beal, Clerk

**STATE OF NORTH CAROLINA; COUNTY OF GRANVILLE**

I, the undersigned Notary Public for the County of Granville and State of North Carolina, do hereby certify that Robin E. Reif, either ( ) personally known by me or ( ) proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally appeared before me this day and acknowledged that she is the Clerk to the City of Creedmoor Board of Commissioners, and that by authority duly given and as the act of said municipal corporation, the foregoing instrument was signed in its name by its Mayor and attested by herself as Clerk to the Board of Commissioners.

Witness my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2013.

(OFFICIAL SEAL)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed or Typed Name

My commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA; COUNTY OF GRANVILLE

I, the undersigned Notary Public for the County of Granville and State of North Carolina, do hereby certify that Beverly Beal, either ( ) personally known by me or (\_\_\_) proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally appeared before me this day and acknowledged that she is the Secretary to the South Granville Water and Sewer Authority Board of Commissioners, and that by authority duly given and as the act of said municipal corporation, the foregoing instrument was signed in its name by its Chairman and attested by herself as Secretary to the Board of Commissioners.

Witness my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2013.

(OFFICIAL SEAL)

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Printed or Typed Name  
My commission expires: \_\_\_\_\_

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Schedule 10.2

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