

**CURRIN & DUTRA, LLP**  
ATTORNEYS AT LAW

Thomas L. Currin  
Lori A. Dutra \*

\*Also Member Florida Bar

118 Main Street  
P.O. Box 1226  
Oxford, NC 27565  
(919) 693-8011  
Fax: (919) 690-1415

May 16, 2013

VIA HAND DELIVERY

James C. Wrenn, Jr.  
HOPPER, HICKS & WRENN, LLP  
111 Gilliam Street  
Oxford, NC 27565

RE: Memorandum of Understanding


Dear Jim:

I enjoyed meeting with you and Jimmy Crawford earlier along with Tom Mercer, the Creedmoor Manager. Since our meeting I'm informed by Mr. Mercer that you would like to see our idea of what a Memorandum of Understanding for the purpose of acquisition of Creedmoor's utilities by SGWASA would look like. As you know, there is rarely unanimity on any board with regard to every aspect of any complicated issue. Nevertheless, I have drafted a Memorandum of Understanding which I believe would receive the support of the necessary members of our board and is therefore perhaps a starting point for our discussion. Pursuant to your request I enclose a copy of that draft which refers to and incorporates a map of the proposed Creedmoor "service area" (also attached).

After you have had an opportunity to review these items, Mr. Mercer and I will be glad to receive your observations on them.

With kindest personal regards, I am

Sincerely,  
**CURRIN & DUTRA, LLP**

  
Thomas L. Currin

TLC/Ifp

Enclosures

STATE OF NORTH CAROLINA  
GRANVILLE COUNTY

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is made and entered into by and between the City of Creedmoor, a North Carolina municipal corporation, duly organized and existing under the laws of the State of North Carolina, hereinafter referred to as "Creedmoor", and the South Granville Water and Sewer Authority, a North Carolina statutorily authorized agency, duly organized and existing under the laws of the State of North Carolina, hereinafter referred to as "SGWASA".

The purposes of this agreement are to:

- Assure the continued provision of adequate capacity of high quality, reliable, economical, safe and sanitary water and sewer service within the present and future corporate limits and Extraterritorial Jurisdiction (hereinafter referred to as "ETJ") of Creedmoor;
- Provide for the orderly and permanent transfer of responsibility for the ownership, construction, operation, maintenance, management, and financing of Creedmoor's water and sewer utility system from Creedmoor to SGWASA, and;
- Transfer the managerial, operational, and financial responsibility of operating, maintaining, and expanding the water and sewer utility systems serving the present and future corporate limits and ETJ of Creedmoor from Creedmoor to SGWASA.
- Assist with the regional planning of the water and sewer needs for the South Granville County area served by SGWASA, which includes the growing municipalities of Creedmoor, Butner and Stem.
- Provide for such water and sewer needs recognizing authority and jurisdiction of the local municipalities and the county comprising SGWASA to control development and growth into their respective service areas and, where appropriate, to facilitate annexation of the areas to which service is extended.

WHEREAS, North Carolina General Statutes 160 A-274 and 162 A-14 authorize and empower a local unit of government to transfer jurisdiction over and lease, lend, grant or convey 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 unit of local government to a duly constituted water and sewer authority;

WHEREAS, Creedmoor owns, operates, and maintains water and sewer utility systems within and outside its corporate limits and has contracted for the provision of services with the

Granville County School Board and Granville County;

WHEREAS, Creedmoor desires to transfer its water and sewer utility systems to SGWASA in accordance with the terms and conditions hereinafter stated;

WHEREAS, SGWASA agrees to assume full responsibility for the provision of water and sewer services in Creedmoor, including responsibility for provision of water and sewer service in Creedmoor's planning and zoning jurisdiction and areas of future growth in accordance with the terms and conditions hereinafter stated; and

WHEREAS, SGWASA agrees to pay Creedmoor for its existing water and sewer infrastructure transferred herein for an amount to be determined, including assuming the obligation for current debt on said infrastructure; and

WHEREAS, Creedmoor desires to be recognized as a full member of SGWASA with the vested voting rights of a constituent and founding member

NOW THEREFORE, for the consideration hereinafter stated, the parties agree to enter into a contract providing for the transfer of the Creedmoor owned water and sewer system to SGWASA identified herein as follows:

- a) The transfer shall be perpetual and Creedmoor shall be a full member of SGWASA. "Full member of SGWASA" is defined in accordance with the bylaws adopted by SGWASA which identifies that the two members designated by the City of Creedmoor shall have full voting authority.
- b) SGWASA shall have the sole responsibility and authority to appoint or otherwise employ the personnel necessary for the implementation of this Agreement.
- c) The responsibility for financing the construction, operation and maintenance of the merged water and sewer system and any extensions thereof shall be in accordance with the terms of this MOU and the final contract. SGWASA shall be entitled to the receipt of all revenues from the merged water and sewer system and any extensions thereof.
- d) Creedmoor agrees and grants the authority for appropriate employees of SGWASA to work and act in Creedmoor as necessary to carry out the purposes of this Agreement as appropriate under the ordinances and regulations of both SGWASA and Creedmoor.
- e) Creedmoor shall transfer to SGWASA and its assignees or successors, and SGWASA and its assignees or successors shall receive from Creedmoor, in accordance with the terms and conditions set forth in the final purchase contract:

All pipes, water lines, hydrants, sewer lines, pump stations, force mains,

mains, meters, meter boxes, and service laterals, elevated water tanks, and all other appurtenances normally associated with, and owned by Creedmoor, and presently in use within Creedmoor's water and sewer system. (Except Creedmoor shall reserve the right to receive income from the rental of commercial communication equipment leases and public communication equipment including Police, Fire and Rescue on any such property including elevated water tanks.)

- f) Creedmoor specifically reserves all right of ownership and possession to all real property and real property interests owned by it except as specifically identified for transfer to SGWASA ownership.
- g) For additional consideration, Creedmoor shall cooperate as necessary to transfer to SGWASA its rights to nutrient credits in the Tar Pamlico Basin, and its membership on the Tar-Pamlico Basin Association.
- h) For additional consideration, if permitted, Creedmoor shall cooperate as necessary to transfer its current applications, permits and financing for a 1.15 MGD sewer treatment plant to be located on Hester Road and discharge to the Tar River (hereinafter the "Tar River plant"). SGWASA agrees to honor all contracts regarding said applications with the engineers and consultants involved in said applications.
- i) Creedmoor shall transfer the real property parcels acquired by the City for construction of the Tar River plant and discharge site. The purchase price for said parcels will be additional consideration for the transfer under this agreement.
- j) SGWASA shall have the right to exercise its power of eminent domain within the current and future municipal and planning limits of Creedmoor for activities necessary to fulfill SGWASA's water and sewer service obligations, to include maintenance, operations, improvements, and expansion of the system, defined in this Agreement.
- k) Each of the municipalities who are members of SGWASA should enter into agreements respecting future annexations which will adopt designated service areas and provide that neither of the other municipalities will annex into its fellow members' service areas.

**1.0 Transfer Date**

The Transfer Date of the property described in this MOU is projected to be July 1, 2014. Said date may be modified by the final agreement of the parties.

## **1.1 Due Diligence**

Upon execution of the MOU, SGWASA and the City of Creedmoor will conduct a final due diligence assessment for the transfer. The activities of the due diligence assessment will be completed by **December 31, 2013**.

The purpose of the due diligence assessment will be to verify that the transfer can be accomplished in accordance with any conditions of transfer, and with the assumptions used to develop the terms and conditions of this MOU, including the revenue and expense projections used to develop the business/financial plan for the transfer.

The due diligence assessment will include, but is not limited to, a review of the capital improvements plan, operations plan, employee transfer plan and customer information/billing migration plan required to implement the transfer. The parties shall have complete access to the financial records related to their respective operations of the water and sewer systems. The due diligence assessment shall be accomplished under the joint direction of the Executive Director of SGWASA and the City Manager of Creedmoor and its findings shall be submitted in the form of a summary report.

## **1.2 Due Diligence Disposition**

If the Executive Director of SGWASA and the City Manager of Creedmoor determine that the transfer can proceed in accordance with the terms and conditions of the MOU, then the Executive Director of SGWASA and the City Manager of Creedmoor will submit a letter to their respective governing boards documenting the completion of the due diligence assessment, and confirming that the Transfer Date for the transfer will be July 1, 2014.

Upon said determination, the parties shall prepare a final purchase contract for the transfer.

If the Executive Director of SGWASA and the City Manager of Creedmoor determine that the transfer can not proceed in accordance with the terms and conditions of the MOU, then the Executive Director of SGWASA and the City Manager of Creedmoor will notify their respective governing boards and conduct additional studies and analyses as required to address specific issues of concern. The Transfer Date will be deferred until the additional studies and analyses have been completed and the issues of concern have been addressed to the mutual satisfaction of the Executive Director of SGWASA and the City Manager of Creedmoor.

If upon completion of the additional studies and analyses, the issues of concern can not be resolved to the mutual satisfaction of the Executive Director of SGWASA and the City Manager of Creedmoor, then either party can terminate this MOU by providing written notice to the other party.

## **2.0 Responsibility for Merged System**

Upon the Transfer Date, SGWASA shall assume the immediate duty and responsibility for financing; operating; maintaining; improving; and expanding the water and sewer systems serving Creedmoor's existing and future corporate limits and ETJ. Planning activities and expansion will be performed in accordance with Paragraphs 4.1, 4.2 and 4.3 herein. After the Transfer Date, Creedmoor's water and sewer system shall be fully incorporated into the water and sewer system operated and maintained by SGWASA. SGWASA's duties and responsibilities hereunder 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 "inside" customers of SGWASA. Customers within the City of Creedmoor and Creedmoor's ETJ shall receive the most favorable rates offered by SGWASA for similar services.

### **2.1 Right to Operate**

Creedmoor shall irrevocably grant to SGWASA the right to design, construct, operate, maintain and perform all related activities required to operate, maintain, expand, upgrade and improve Creedmoor's existing water and sewer utility system in accordance with SGWASA's water and sewer utility systems, standards and policies for operation and performance, level of service, reliability, and redundancy.

In all instances, SGWASA or its authorized contractor shall be required to restore and repair any street or other property of Creedmoor upon the completion of any construction, operation, maintenance, replacement, improvement or related activity causing damage thereto.

SGWASA shall indemnify and hold the City of Creedmoor harmless for any claims, causes of action, demands or liabilities of any kind arising out of SGWASA's ownership and operation of the system and property transferred under the purchase agreement.

### **2.2 System Upgrades and Improvements**

SGWASA shall undertake and complete all activities relating to the design; construction; startup; and operation of the system upgrade and improvement projects agreed upon as a part of the final contract, including the upgrade to the Joe Peed pump station necessary to serve increased capacity for the City of Creedmoor.

### **2.3 Notices of Violation**

In the event that fines or penalties are levied by the State of North Carolina for violation of Creedmoor water for wastewater system permits following the Transfer Date, payment of fines for notices of violations will be paid by SGWASA. Any fines or penalties for actions prior to the Transfer Date will be paid by the City of Creedmoor.

#### **2.4 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 SGWASA water and sewer utility system provided Creedmoor users shall receive the benefit of SGWASA's lowest "inside" rates, fees and charges.

#### **3.0 Property Transfer**

Upon the Transfer Date, a Bill of Sale shall be executed by Creedmoor to transfer ownership of all facilities, property, equipment, financial assets, information, and data subject to this Agreement to SGWASA. Such documents shall be sufficient to convey to SGWASA all of Creedmoor's right, title, and interest in Creedmoor's water and sewer system, including access to easements and rights-of-way, whether or not recorded. The transfer of the property to SGWASA shall be done "as is." Creedmoor shall retain ownership of real estate owned by the City which is not specifically authorized to be transferred herein, including Lake Rogers.

Creedmoor shall prepare a list of the infrastructure, equipment and real estate interests to be transferred as part of the due diligence.

Said rights-of-way shall include the non-exclusive right to operate and maintain the subject water and sewer system within any public streets within Creedmoor. Any documents needed to memorialize this grant of access or passage of title shall not be required to contain any warranties of condition or title, except as expressly set forth herein. A quit-claim deed shall be executed by Creedmoor to convey any interests in real property and improvements thereto which are agreed as part of the final purchase contract.

#### **3.1 Compensation**

SGWASA shall pay to Creedmoor an amount to be agreed upon to compensate the City for the value of its infrastructure, equipment and improvements and other property and contract rights transferred under this agreement. This compensation is expected to be paid by partial lump sum, installment payments over time with interest, and/or assumption of debt obligations of the City of Creedmoor related to its water and sewer infrastructure existing.

#### **3.2 Existing and Future Water and Sewer Capacity Allocations**

Creedmoor has an existing water supply allocation from SGWASA for 550,000 gpd for maximum daily demand flows and 550,000 gpd for maximum daily waste water flows measured at the point of receipt at the terminus of the Joe Peed Rd. pump station force main. Currently, Creedmoor daily demand flows are approximately 300,000 gpd.

Creedmoor anticipates growth requiring an expected additional sewer demand of 850,000 gpd within the next 20 years. Creedmoor's analysis of the future capacity of the current SGWASA plant with planned improvements under the restrictions of the Falls Lake Rules reveals that Creedmoor's future demand alone may exceed the reserve capacity of the plant.

SGWASA has publicly stated that it has capacity for the future Creedmoor demand. SGWASA shall provide assurances by amendment to its allocation policy that the anticipated 850,000 additional gpd treatment capacity will be reserved and guaranteed to Creedmoor residents and the Creedmoor service area.

#### **4.0 Expansion and Extension of Water and Sewer Services**

SGWASA shall provide, maintain, and extend the water and sewer systems and facilities as may be required under applicable laws and regulations so as to serve present and future demands, and in particular so as not to impede the orderly growth and development of Creedmoor, as provided in Paragraph 4.1 below. SGWASA shall not practice or permit any discrimination against Creedmoor in the provision of such services based upon location of the point of service within Creedmoor or its ETJ.

#### **4.1 Growth and Development**

SGWASA will provide water and sewer services to customers in the City of Creedmoor and its ETJ in accordance with valid development approvals and building permits issued by the City of Creedmoor. Nothing in this agreement shall affect the sovereign authority of the City of Creedmoor to make zoning, planning and development decisions within its municipal boundaries and ETJ.

#### **4.2 Requests for Service and Service Area**

Upon the Transfer Date, all future requests for new service connections will be made to SGWASA. Request for new services that require extension in the Creedmoor Service Area as identified in Exhibit A will be first referred to Creedmoor for its approval to assure all zoning and land use issues have been addressed. SGWASA agrees to provide existing and future water and sewer customers located within Creedmoor's corporate and ETJ limits, and its service area, service of a quality comparable to that provided to SGWASA's other water and sewer customers. SGWASA specifically agrees that the geographical location of the water and sewer customers in Creedmoor or its ETJ shall not have any substantial effect on the quality of service or timing of repairs to be made by SGWASA.

#### **4.3 Service Area and Jurisdiction**

It is anticipated that the future city limits of the City of Creedmoor will eventually encompass all of its ETJ areas and service areas outside of those limits.



Said area is defined on the map attached hereto as Exhibit A. Creedmoor shall be the Governing Body for said areas as defined in the allocation policy for SGWASA, and said policy shall be amended to define said areas in Creedmoor's jurisdiction.

Expansion into such areas shall be considered upon an application to SGWASA by the property owner together with an application for annexation or agreement to annex by the property owner under the City's policy, if required.

#### **5.0 Employee Transfer**

All designated staff of Creedmoor's water and sewer utility system will be offered employment with SGWASA's water and sewer utility system upon such terms and conditions as shall be determined by SGWASA. Creedmoor employees accepting positions with SGWASA will suffer no loss of pay, annual leave, sick leave, or years in retirement program.

#### **5.1 Fund Transfers for Accrued Employee Benefits**

Creedmoor will transfer funds sufficient to pay for all accrued vacation and 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 prior to the Transfer Date of this Agreement during the due diligence period under this Agreement.

#### **6.0 Records Transfer**

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 Creedmoor's water and sewer utility system including billing, collection and payment records.

Creedmoor shall keep its computer software and a copy of its billing data to allow the uninterrupted continuation of billing and record keeping for its garbage pick up.

#### **7.0 Customer Transfer**

As of the Transfer Date, all customers and users of Creedmoor's water and sewer system shall become subject to all rules, regulations and ordinances of SGWASA as the same apply to all users and customers of the water and sewer system of SGWASA, and as same are now or may hereafter be amended and shall be billed for services by SGWASA.

#### **8.0 Indebtedness**

In addition to the value paid for the transferred assets, SGWASA agrees to pay Creedmoor all amounts necessary to enable Creedmoor to make all debt service payments when due and payable on all existing outstanding indebtedness of Creedmoor for water and sewer facilities covered under this Agreement. Payment of said sums shall occur not later than thirty days prior to the due date of any debt payment to allow time for funds to clear and be forwarded to the bond holder. Said debt shall be listed in a schedule in the final purchase contract.

**9.0 Existing Commitments**

Creedmoor has committed to the provisions of water and sewer allocations for certain projects and subdivisions by approval of applications therefor pursuant to its planning process. SGWASA will honor said commitments and agreements. Such commitments shall be individually listed for transfer in the final purchase contract.

**10.0 Conflict/Default Resolution**

In the event of conflict or default that might arise for matters associated with this Agreement, the parties involved agree to informally and formally communicate to resolve the conflict. If this communication is not successful in resolving the conflict, the matter will be presented to the Executive Director of SGWASA and the City Manager of Creedmoor for resolution. If the Executive Director and City Manager are unable to resolve the conflict, the matter will be presented to the respective governing boards for resolution.

**11.0 Fire Protection Services**

SGWASA shall be responsible for testing and maintaining fire hydrants and services in a reasonable manner at a level equivalent to that maintained by Creedmoor at the time of transfer of the system. This level of service shall include hydrant spacing, hydrant maintenance and water volume and pressure available at the hydrant and hydrant testing as required by State agencies on at least an annual basis. SGWASA shall coordinate with the Creedmoor Fire Department as necessary to provide other services.

There shall be no charge for water used in Fire department training or fire-fighting services.

**12.0** Creedmoor considers the following matters to be conditions precedent to the final contract for transfer under this MOU:

- 1) Creedmoor's Extraterritorial Jurisdiction is expanded to include the service area defined in Exhibit A.
- 2) Creedmoor is assured full voting membership on the Board of SGWASA effective upon the date of execution of the final contract for transfer.
- 3) SGWASA amends its allocation policy to provide a guarantee or reservation of capacity to the City of Creedmoor of at least 850,000 additional gpd water and sewer, and that said provision may not be altered without the consent of both voting members representing the City of Creedmoor on the SGWASA board.

**13.0 Amendment to Agreement**

This memorandum of understanding may be amended only by a document in writing, approved by the City Board of Commissioners of Creedmoor and the SGWASA

Board. It is intended to be comprehensive, but if additional matters arise for inclusion in the final contract for transfer, they may be addressed by the parties.

**14.0 Customer Notification**

Creedmoor agrees to use all practical means, including direct mailing, to notify customers of changes associated with a final contract in accordance with this Agreement. Such notification shall include information on schedule and mechanics of transfer and information concerning SGWASA's policies and procedures.

IN WITNESS WHEREOF, the parties have executed this agreement on the date identified below.

Approved this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**South Granville Water And Sewer Authority**

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Director

Approved this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**City of Creedmoor**

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor