

**INTERLOCAL AGREEMENT BETWEEN THE CITY
OF FAYETTEVILLE, CUMBERLAND COUNTY, AND
FAYETTEVILLE PUBLIC WORKS COMMISSION
RELATED TO THE FUNDING AND DEVELOPMENT
OF THE FRANKLIN STREET PARKING GARAGE**

THIS INTERLOCAL AGREEMENT is entered into between the CITY OF FAYETTEVILLE, Cumberland County, North Carolina, ("City"), CUMBERLAND COUNTY, North Carolina, ("County") and the PUBLIC WORKS COMMISSION OF THE CITY OF FAYETTEVILLE, ("PWC") for the purpose of developing and financing the Franklin Street Parking Garage adjacent to the Robert C. Williams Building and to provide for future partnerships in providing rural water service to unincorporated portions of Cumberland County.

WITNESSETH:

WHEREAS; both Fayetteville and Cumberland County benefit from economic activity and increased property values in the downtown area;

WHEREAS; the City has conducted studies which conclude that development and commercial activity in the downtown area of Fayetteville has been hampered due to an insufficient inventory of public parking;

WHEREAS; PWC developed the Robert C. Williams Building ("RCW Building") on Hay Street and is in the process of marketing that building for sale;

WHEREAS; the RCW Building is located in the core downtown area and does not have sufficient parking for its customers and tenants;

WHEREAS; the construction of the Franklin Street Parking Garage with a capacity of approximately 300 spaces will increase the value of the RCW Building and promote economic activity, development and redevelopment in the downtown, and thereby enhance property value growth in the Municipal Service District of downtown and will benefit all parties;

WHEREAS; the County has an interest in making rural water service available throughout the County; and

WHEREAS; PWC currently has the capacity to treat and provide potable water and the expertise to serve utility operations.

NOW THEREFORE; the Parties agree as follows:

1. **Franklin Street Parking Garage** – The Parties agree to the following regarding the construction of a parking garage on the City’s lot adjacent to the RCW Building.

1.1. Project Funding

1.1.1. **Cash Contribution** – PWC will provide an equity investment of one million five hundred thousand (\$1,500,000) contributed as follows:

- 1.1.1.1. Reimbursement to the Fayetteville Cumberland County Chamber of Commerce of costs incurred in initial and schematic design of the project;
- 1.1.1.2. Reimbursement to the City for all design and construction management related costs; and
- 1.1.1.3. Reimbursement to the City for construction cost payments upon receipt of construction progress billing documentation and reimbursement requests from the City up to the unexpended Cash Contribution amount.

1.1.2. **Debt Financing** – The City will take the lead in securing financing sufficient to support construction of the project utilizing either ARRA Economic Development Bond program financing or tax exempt debt financing.

1.1.3. **Debt Repayment** – PWC will contribute five hundred thousand (\$500,000) to reimburse the City for initial debt payments when they become due. The City will contribute twenty five thousand (\$25,000) annually from Municipal Service District (“MSD”) revenue beginning in FY 2012 to the Debt Repayment Fund, established by the City. Beginning in FY 2012, the City’s MSD contribution will also include the cumulative amount of growth in the MSD revenue collections over the FY 2011 base year. The remaining debt will be repaid through a Synthetic Tax Increment Financing (“TIF”) as follows:

- 1.1.3.1. The City and the County agree to pay into the Debt Repayment Fund tax revenue from the cumulative amount of growth in current year ad valorem tax collections from properties within the MSD beginning in FY 2012 over the FY 2011 base year until such time as the Debt Repayment Fund is sufficient to fully repay the debt incurred to construct the garage.

1.1.3.2. Basis – The current year ad valorem tax revenue collected from properties within the increment area (the MSD) for the FY 2011 fiscal year shall be the Basis of the tax increment calculation.

1.1.3.3. TIF Contribution – Beginning in FY 2012, the City and County shall contribute to the Debt Repayment Fund quarterly any increase in ad valorem tax revenue collected between the Basis and collections during that quarter.

1.2. Project Development – The parking garage shall be developed with specific characteristics and conditions as follows:

1.2.1. **Design** – The parking garage will be designed and constructed to tie into the RCW Building on an upper level as determined most feasible by the architect. The parking garage, including access control, will be designed to allow clear identification of a number of parking spaces reserved to the RCW Building consistent with the equity payment made by PWC and debt issuance restrictions. The parking garage will be designed to minimize its impact on the function of the drive through at the RCW Building and the existing capacity of that facility will be maintained. PWC's approval of the final design of tie in connections must be obtained prior to bidding the project. All costs of completing designed connections will be included in the project.

1.2.2. **Construction** – The City will manage the construction of the parking garage including any service contracts necessary to accomplish that work. Existing parking resources available to the RCW Building will be maintained during construction through the dedication of temporary off-site parking facilities provided under the same terms as displaced parking. Every reasonable effort will be made to minimize the extent and duration of any impact of construction on the functioning of the drive through that serves the RCW Building. The drive through will not be closed during the business hours of the tenant operating the drive through window without prior consent thereof.

1.3. Project Operation – The City shall operate the parking garage exercising complete control and responsibility for establishing all policies and procedures necessary to operate and maintain the garage with the following restrictions and contributions:

1.3.1. **Capacity Reservation** – A portion of the parking garage’s capacity will be reserved for use by tenants of the RCW Building as follows:

1.3.1.1. Number of Spaces – The capacity to be reserved will be calculated based upon the equity payment provided by PWC; that is the percentage of parking capacity equal to the percentage of the equity payment to the total cost of constructing the parking garage including all design costs. Further, an additional reservation from the remaining, debt financed capacity up to 10 percent will be reserved with the purpose of getting as close to 100 spaces reserved as permissible under debt issuance restrictions and as practicable based upon the design of the structure including circulation and access control points. Additionally, the City will continue to make available the 50 permitted spaces in the parking lot across Franklin Street for the employees of the tenants of the RCW Building, such arrangement consistent with the current use of said parking lot.

1.3.1.2. Location – The spaces reserved will be located at the top of the structure in a manner designed to allow their use to be separately controlled through the use of automated access equipment, or as otherwise agreed to by PWC and the City.

1.3.1.3. Timing – Any spaces reserved for the use of the RCW Building under this agreement will be open to the public for general use on the same terms and conditions as the other spaces in the garage between 6:00 p.m. and 7:00 a.m. Monday through Friday and at all times on Saturday, Sunday, and holidays as established by the City.

1.3.1.4. Operations and Maintenance Cost Contribution – In order to maintain this reservation, PWC or subsequent owner of the RCW Building must reimburse the City quarterly for a proportion of the operation and maintenance costs of the parking garage, including any identified capital reserve amount for reconditioning or major repairs, in proportion to the total percentage of the spaces in the garage reserved for use by the RCW Building.

1.3.1.5. Term – The reservations provided for in Section 1.3.1 shall extend for a period of twenty five (25) years from the date a certificate of occupancy is

provided for the parking structure unless earlier terminated by the failure to comply with Section 1.3.1.4., another material term of this agreement, or by agreement of the parties.

1.3.2. **Operational Revenue** – All revenue from fees charged for parking or other use of the parking garage or other facilities owned by the City will accrue solely to the City.

2. **County Rural Water Service Development** – The County desires to provide rural water service to certain unincorporated areas of the County currently without service. PWC agrees to sell water to the County for this rural water service and to provide other services pertaining to the operation and maintenance of the County’s rural water system pursuant to the service delivery options and other terms set forth in this agreement.

2.1. **Rural Water Districts** – The rural water systems to be served by PWC water have been or may be established by the County as water districts, water and sewer districts, County-owned systems, or by any other method authorized by the North Carolina General Statutes and shall be referred to collectively as the “County Water System” in this agreement.

2.2. **Rural Water Standards** – All distribution systems to be developed in the County Water System shall be developed to USDA-RD rural water system standards, whether or not such standards comply with the standards established by PWC from time to time.

2.3. **Cost of Development** – PWC shall not incur any obligation to share in any portion of the costs of developing the County Water System. All costs, including the cost of any distribution lines to deliver the water to any established water districts shall be the responsibility of the County.

2.4. **Ownership of Assets** – The County shall own all the assets of the County Water System.

2.5. **Service Delivery Options** – PWC shall provide the water and services in accordance with the service delivery options identified as Options 1, 1A, 2 and 3 in Attachment A to this agreement. At the time any such water service is developed, the County shall elect either option as the service delivery method it chooses to provide service in any component system in the County Water System. The County may choose different options for different component systems.

- 2.6. **Capacity Limitation** – PWC shall have no obligation to provide service to any component system of the County Water System when the cumulative addition of the peak demand in the component system of the County Water System with all other customer peak demand exceeds 80 percent of its treatment capacity at the time such request for County service is made.
- 2.7. **Contaminated Water** – PWC will extend service into areas identified by the County as suffering from contaminated water as long as the capital investment to be paid by PWC as part of the extension can be recovered within twelve (12) years of project completion through rates established by PWC, County contribution, property owner contribution, County property assessments, grants, or combinations thereof. “Contaminated” as used herein shall mean found to be unfit for human consumption by a governmental agency applying published regulatory standards. The service extended under this paragraph will be standard PWC water service under the terms and conditions generally applicable to existing customers outside the City of Fayetteville. Any such extensions under this provision shall become part of PWC’s distribution system and owned by it.
- 2.8. **Consideration** – PWC enters into this agreement with County as part of the consideration to County for County’s agreement to partially fund construction of the Franklin Street Parking Garage described in Section 1 of this agreement.
- 2.9. **Term** – The rights of the County and the obligations of PWC set forth in Sections 2 through 2.9 hereof shall remain in place through June 30, 2030.
3. **General Terms**
- 3.1. **Term** – Unless otherwise indicated, this agreement will persist until all debt incurred by the City for the initial construction of the Franklin Street Parking Garage has been retired.
- 3.2. **Timing of Payments** – Any payment required under this agreement will be made within thirty (30) days of becoming due as established by the terms hereof. Where reimbursement is called for, the payment will become due upon the request of the party eligible for reimbursement.
- 3.3. **Dispute Resolution** – Any dispute regarding the application or enforcement of this agreement will be communicated to the City Manager, County Manager, and PWC General Manager. These three individuals will meet to attempt to resolve any dispute

prior to any further enforcement action. Should the managers be unable to resolve any issue, then a joint meeting of the governing boards of the parties will meet and attempt to resolve all concerns prior to any further action.

3.4. **Bond Counsel Review** – The parties agree that a fundamental condition of this project is the availability of public tax exempt or tax rebate debt financing. Any revisions to this agreement recommended by the City and PWC’s joint bond counsel in order to qualify for that financing will be incorporated into this agreement, provided that any revisions to or changes that impact Sections 1.1.3.1 through 1.1.3.3 shall require consent of the County.

3.5. **Severability** – The determination of a court of competent jurisdiction that any section or term hereof is illegal or unenforceable shall not impact the effectiveness of any remaining terms. The parties agree to negotiate in good faith to revise the agreement as necessary to cure any legal defect necessary to protect the purpose and intent of this agreement.

ADOPTED this 7 day of June, 2010,

CITY OF FAYETTEVILLE



By: Anthony G. Chavonne
ANTHONY G. CHAVONNE, Mayor

ATTEST:

Rita Perry
RITA PERRY, City Clerk

Approved and adopted at the regular meeting of the Cumberland County Board of Commissioners held June 7, 2010.

CUMBERLAND COUNTY

(SEAL)

By: 
BILLY R. KING, Chairman
Cumberland County Board of Commissioners

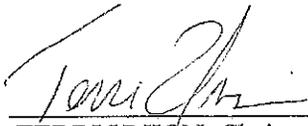
ATTEST:


MARIE COLGAN, Clerk
Cumberland County Board of Commissioners

Approved and adopted at a duly called meeting of the Board of Directors of the Public Works Commission of the City of Fayetteville held June 9, 2010.

PUBLIC WORKS COMMISSION OF
THE CITY OF FAYETTEVILLE

(SEAL)

By: 
TERRI UNION, Chairman

ATTEST:


MICHAEL G. LALLIER, Secretary

Attachment A

PWC Proposed Cumberland County Options County-wide Rural Water

Option No. 1:

- PWC would provide water and all the services needed such as O&M, billing, etc.
- PWC would establish rate schedules for the water district using a 1.4 multiplier times all City of Fayetteville rate schedules.
- Cumberland County would be responsible for any debt on the water system.
- PWC would bill a capital recovery charge to the rural water district residences identified by the County for a small administrative fee per transaction.

Assumptions:

1. Cumberland County will own the rural water systems.
2. PWC would supply the water to the rural water systems.
3. Cumberland County wishes PWC to handle all the routine aspects associated with owning a rural water system.
4. O&M would not include any capital replacement items over \$5,000, any upgrades, reconstruction or extensions. All PWC standard fees and charges would apply except lateral charges.

Option No. 1A:

- PWC would provide water and all the services needed such as O&M, billing, etc.
- PWC would establish rate schedules for the water district using a 1.1 multiplier times all City of Fayetteville rate schedules for the first year of the contract and would escalate the multiplier each year by 0.1 until the multiplier reached a cap of 1.5 in the fifth year.
- Cumberland County would be responsible for any debt on the water system.
- PWC would bill a capital recovery charge to the rural water district residences identified by the County for a small administrative fee per transaction.

Assumptions:

1. Cumberland County will own the rural water systems.
2. PWC would supply the water to the rural water systems.
3. Cumberland County wishes PWC to handle all the routine aspects associated with owning a rural water system.
4. O&M would not include any capital replacement items over \$5,000, any upgrades, reconstruction or extensions. All PWC standard fees and charges would apply except lateral charges.

Option No. 2

- PWC would provide water to the rural district on a wholesale basis at PWC standard wholesale rate. (All interconnection points between the rural water system and PWC would be metered.)

- The rural water district would contract for all O&M services, billing, etc. with a third party service company.

Assumptions:

1. Cumberland County will own the rural water systems.
2. PWC would supply the water to the rural water systems.
3. Cumberland County wishes to handle all the routine aspects associated with owning a rural water system.

Option No. 3

- PWC would provide water to the rural district on a wholesale basis at PWC standard wholesale rate. (All interconnection points between the rural water system and PWC would be metered.)
- The rural water district would contract for some or all O&M services, billing, etc. with PWC at an agreed to pricing schedule.

Assumptions:

1. Cumberland County will own the rural water systems.
2. PWC would supply the water to the rural water systems.
3. Cumberland County wishes to handle contracting with PWC and other third parties for all the routine aspects associated with owning a rural water system.

(Revision 1)

(May 11, 2010)