

STATE OF NORTH CAROLINA

COUNTY OF WAKE

TEMPORARY WATER SERVICE AGREEMENT

THIS AGREEMENT, made and entered into the ___ day of _____, 2020, by and between the TOWN OF APEX, (“APEX”), a North Carolina municipal corporation, and AQUA NORTH CAROLINA, INC., (“AQUA”), a North Carolina business corporation, is for the provision of emergency water service from APEX to AQUA, as described hereinafter.

WITNESSETH

WHEREAS, AQUA is the owner and operator of the Merion public water system (PWSID # NC40-92-005) hereafter “Merion”;

WHEREAS, the Merion system previously experienced a temporary water shortage and AQUA wishes to develop an emergency water supply agreement so that water can be purchased and utilized for the Merion system on a temporary basis in the event of another temporary water shortage;

WHEREAS, APEX also owns and operates a public water system;

WHEREAS, AQUA’s and APEX’s public water systems are both located in proximity to Colby Chase Road, Apex, North Carolina hereinafter referred to as the SITE, and

WHEREAS, sufficient hydraulic engineering analysis has been performed to determine that water from the APEX water system will flow to AQUA, once the two water systems are connected, under the conditions established in this agreement, and

WHEREAS, APEX has agreed to sell and AQUA has agreed to buy water on a temporary basis and for specified periods and under the terms and conditions of this agreement,

NOW, THEREFORE, in consideration of the respective rights, powers, conditions, duties and obligations hereinafter set forth, the parties mutually agree as follows:

1) In the event of a water emergency as hereafter described, APEX will provide water to AQUA in an amount up to 26,000 gallons per day at the SITE for purchase by AQUA for the periods of time and at the rates specified herein.

2) APEX and AQUA shall jointly determine where the interconnection point between the APEX system and AQUA system shall be located. AQUA shall pay for all costs of construction of the water main extension required for the permanent interconnection of the two water systems and an irreversible flow water meter station at the SITE. AQUA

shall select an engineering firm to design and prepare construction drawings and contract documents for the water main extension and water meter station. Prior to construction, APEX and AQUA shall both review and approve, if acceptable, the construction drawings. Each party shall be responsible for its own administrative and legal costs of contract and plan review and approval. In the event that easements are required for either party to connect its respective water system to the agreed upon point of interconnection, AQUA shall be responsible for obtaining such easements as may be needed in order to connect both systems to that point. The plans for all facilities that are proposed by AQUA to be part of the AQUA system will meet AQUA specifications and regulatory standards. The plans for all facilities that are proposed by APEX to be part of the APEX system will meet APEX specifications and any applicable regulatory specifications.

3) Ownership of Facilities. AQUA shall own and be responsible for the operation and maintenance of all distribution systems facilities located on the AQUA side of the interconnection point. APEX shall own and be responsible for the operation and maintenance of all distribution systems facilities located on the APEX side of the interconnection point. For this agreement, the interconnection point shall be defined as the discharge side of the meter and the meter shall be owned by APEX).

4) After construction is completed, the interconnected water systems of APEX and AQUA will be separated by closed water valves. The valve on the APEX side of the interconnection shall only be operated by APEX staff. These water valves may be opened in a sequence such that AQUA may receive water from APEX on an emergency basis during water shortages using the procedures described hereafter. These specified periods shall only be during temporary water outages in all or part of the Merion system or other such conditions mutually deemed emergencies by the APEX Water Resources Director and AQUA Operations Director. For the purpose of this AGREEMENT, temporary water outages shall mean water emergencies, which include, but are not limited to, a severed or damaged water main, a malfunctioning water well, a lack of water pressure, or a planned water outage or construction activities in the water distribution system. Furthermore, while receiving water from APEX under this agreement, AQUA shall immediately send notice requesting that all Merion water customers suspend all non-essential water usage which includes, but is not limited to, irrigation, vehicle and structure washing, and filling of outdoor water fountains, swimming pools, or features.

5) AQUA shall pay to APEX the non-residential outside Town rates in effect at the time the temporary water service is furnished (currently \$8.38 per 1,000 gallons) from APEX to AQUA. In the event that any temporary water service event exceeds 30 calendar days in a calendar year, AQUA shall pay to APEX Capital Reimbursement Fees for water, at the rate then in effect, multiplied by the number of units served by the Merion water system, currently 106.

6) APEX shall bill AQUA at the conclusion of each temporary water service event, but shall not include a billing / service charge unless the number of temporary water service events is more than one per fiscal year (July 1st through June 30th). Bills shall be paid no later than 15 calendar days of receipt of the billing statement. The billing / service charge

shall be \$50.00 for each temporary water service event occurring after the first temporary water service event in any fiscal year. If AQUA fails to pay APEX 30 days after receipt of the billing statement, APEX shall have the right to immediately terminate water service.

7) AQUA and APEX shall each respectively designate *in writing* a person or persons to administer requests to receive and to provide water under this Agreement (the "designated representative"). Once designated, such person(s) may make and receive requests orally. In the event AQUA needs water, AQUA's representatives are responsible for communicating with APEX and coordinating operational actions necessary for the water to be transferred. AQUA shall notify APEX at least 48 hours in advance of any *planned* temporary water outage permitted under this AGREEMENT. For emergency situations, APEX will respond as soon as practicable. AQUA shall also immediately notify the other at the conclusion of a temporary water service event.

8) AQUA acknowledges that the APEX water system will normally be using chloramines as their residual disinfectant and Aqua will shut the valves from any source of AQUA's water during the temporary water service event.

9) APEX reserves the right to deny temporary water service for failure to comply with the conditions of this AGREEMENT. APEX reserves the right to deny water service in the event that water cannot be practicably furnished without negatively impacting the operation of APEX's water system, as determined in the reasonable opinion of the providing party. Such circumstances include but are not limited to periods of water shortage, periods when insufficient water exists to meet the requests of the providing party's outside customers, or periods when depletion of water reserves could endanger the providing party's ability to provide for its customers' future needs.

10) APEX agrees not to charge AQUA water capital reimbursement fees or any charges other than the consumption charges and billing / service charges except as described in sections 5 and 6 above.

11) This AGREEMENT shall expire at 12:00 midnight twenty years from the date noted in the first paragraph hereof. This AGREEMENT may be extended or modified only upon written consent of the parties.

12) Substantial breach of the terms of this AGREEMENT that is not cured by the breaching party, after notice, billing disputes, equipment problems, or failure to resolve other issues necessary for the continued effective function of the water systems of each party are grounds for termination by either party upon 90 days' written notice. In addition, either party may terminate this AGREEMENT upon six months' notice to the other party upon a reasonable determination by the terminating party that it is detrimental to continue this AGREEMENT.

13) All matters relating to this AGREEMENT shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any

action relating to this agreement shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

14) APEX shall not be liable to AQUA, to any person, firm, corporation, municipality, or other water consumer for failure to supply a sufficient quantity or quality of water under this AGREEMENT or from failure to comply with any State or Federal standards relating to drinking water. Notwithstanding the references to third parties in this agreement, APEX shall not be liable to those parties for any obligations within this AGREEMENT and shall not be obligated to enforce any requirements imposed by this AGREEMENT or by any independent agreement with third parties. AQUA shall indemnify APEX and its officials, agents, and employees from and against all claims, judgments, costs, damages, fines, penalties, interest, and expenses (including but not limited to attorney's fees) imposed against such APEX that arise from or are in connection with the indemnifying party's receipt or nonreceipt of water pursuant to this AGREEMENT.

15) To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this AGREEMENT.

16) No party may transfer or assign its rights under this AGREEMENT without written approval from the governing board of APEX and the officers of AQUA. This AGREEMENT shall bind the parties hereto; respective successors, permitted assigns and transferees.

17) Notwithstanding any other provisions of this AGREEMENT, this AGREEMENT and all materials submitted to APEX by AQUA are subject to the public records laws of the State of North Carolina and it is the responsibility of AQUA to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to APEX. AQUA understands and agrees that APEX may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this AGREEMENT. To the extent that any other provisions of this AGREEMENT conflict with this paragraph, the provisions of this section shall control.

18) AQUA shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of AQUA's knowledge, any subcontractor employed by AQUA as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

19) AQUA certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, *et seq.* In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, AQUA shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

20) AQUA warrants and agrees that no labor supplied by AQUA or AQUA's subcontractors in the performance of this AGREEMENT shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

21) This AGREEMENT contains the entire agreement and understanding of the parties hereto with respect to the subject matter contained herein and all prior agreements or understandings of the parties hereto are hereby revoked. There are no agreements, restrictions, promises, warranties, covenants or other undertakings other than those expressly set forth herein.

IN WITNESS WHEREOF, AQUA has executed the foregoing with the signature(s) of its duly authorized officer(s), and APEX has executed with the signature of its Mayor, attested by its Town Clerk, with the official seal affixed, the day and year first above written.

AQUA NORTH CAROLINA, INC.:

TOWN OF APEX

By:

By:

Shannon V. Becker, President

Mayor

(If corporate)

ATTEST:

ATTEST:

By:_____

By:_____

Town Clerk

Printed Name/Title

(Affix Seal)

(Affix Seal)