REQUEST FOR BOARD ACTION

ITEM NO. 13.

DATE OF MEETING: June 17, 2013

REQUESTED BY: Pender County Board of Commissioners

SHORT TITLE: Resolution Authorizing Approval of Updated Interlocal Water Purchase Agreement between Rocky Point/Topsail Water and Sewer District and the Town of Wallace.

BACKGROUND: On December 6, 1999, the Rocky Point/Topsail Water and Sewer District entered into an Interlocal Water Purchase Contract with the Town of Wallace for the ability to purchase potable drinking water in such quantity as may be required by the District up to 6,000,000 gallons per month. The Agreement was later amended on September 13, 2001, January 13, 2005, August 9, 2007, and April 29, 2010, which provided in each case the District's ability to purchase additional capacities of water supply up to 36,000,000 gallons per month (1,200,000 gallons per day).

Even with the completion of the new Pender County Surface Water Treatment Plant, the District desires to retain a water supply from another source (groundwater), although at a much lower capacity than previously requested. The updated Agreement provides that the Town of Wallace agrees to furnish and the District agrees to purchase an average minimum of 375,000 gallons per day of potable water for an initial twenty-year (20) period. The period may be extended for an additional twenty years.

SPECIFIC ACTION REQUESTED: To consider a resolution approving the updated Interlocal Water Purchase Agreement between the Rocky Point/Topsail Water and Sewer District and the Town of Wallace.

COUNTY MANAGER'S RECOMMENDATION

Respectfully defer to the Board of Commissioners.

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the attached updated Water Purchase Agreement between the Rocky Point/Topsail Water and Sewer District and the Town of Wallace is hereby approved. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED_____ SECONDED_____

APPROVED_____ DENIED_____UNANIMOUS

YEA VOTES: Brown ___ McCoy ___ Tate ___ Ward ___ Williams ___

_____ 06/17/13
George R. Brown, Chairman Date

_____ 06/17/13
ATTEST Date

STATE OF NORTH CAROLINA

COUNTIES OF DUPLIN AND PENDER

THIS WATER PURCHASE AGREEMENT, made and entered in this the _____ day of June, 2013, between the **TOWN OF WALLACE,** a North Carolina municipality, with its principal office and place of business in Wallace, Duplin County, North Carolina, (hereafter referred to as "Town"), and the **ROCKY POINT-TOPSAIL WATER AND SEWER DISTRICT,** a water district located in Pender County, (hereafter "District")

WITNESSETH:

WHEREAS, the District was organized and established by Pender County under the provisions of Article 16 of N.C.G.S. §153A-300, et seq., and is authorized to operate a water supply distribution systems to provide and/or purchase potable water for users within the District's area, as well as other locations within Pender County, and has developed plans and constructed infrastructure to do so; and,

WHEREAS, the District and Town formerly entered into a water supply contract dated December 6, 1999, which by mutual agreement was amendments dated: September 13, 2001, January 13, 2005, August 9, 2007, and April 29, 2010, which provided that the District would purchase potable water from the Town of Wallace, and the parties have mutually agreed that this agreement will replace and void the original and amended contracts above referred to;

WHEREAS, in addition to District's water supply system treating and distributing potable water obtained from the Cape Fear River, the District *desires* additional potable water from other sources; and,

WHEREAS, Town owns and operates a water supply and distribution system with the capacity currently capable of serving the Town's users, and the users contemplated by District

within the gallonage limits hereafter set out. Town is also capable of providing potable water in addition to the gallonage limits hereafter set out upon the conditions hereafter prescribed; and,

WHEREAS, the Town Council duly adopted a resolution at its regular Town Council meeting on June 13, 2013, agreeing to sell potable water to the District under the terms and conditions set out in this Agreement, as well as to void the prior contract and amendment thereto relating to the sale of water by Town to District, above referred to, which resolution authorized the execution of this Agreement on behalf of the Town; and,

WHEREAS, the Pender County Board of Commissioners adopted a resolution on June *17*, 2013, agreeing, on behalf of the District, to purchase potable water under the terms and conditions set out in this Agreement, as well as to void the prior contract and amendments thereto between the District and Town, as above referred to, as well as to authorize the execution of this Agreement on behalf of the District; and,

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual agreements and obligations herein contained, the parties contract and agree as follows:

1. Town agrees to furnish to District, and District has agreed to purchase during the term of this Agreement, potable treated water meeting the applicable purity standards of the ***State of North Carolina and the*** United States Environmental Protection Agency, ("EPA") in the quantity and within the time periods hereinafter set out.

2. Town will provide water to District at the point of delivery of the pipeline, which is at the location of the required water meter, at the minimum amount of 375,000 gallons per day ("GPD"), and such higher quantity as requested or utilized by District. The water pressure at the

point of delivery shall not be less than 45.0 pounds per square inch ("psi"). Provided, however, if the minimum water pressure is not available or deliverable by Town, or acceptable or useable by District due to either the Town or District's main supply line being broken, substantial leakage, power failure, hurricane, tropical storm, flood, fire, or other catastrophe, Town shall not be deemed to have violated the terms of this Agreement relative to the normal required minimum delivery pressure or minimum amount deliverable, for the time required to restore the service and/or pressure ***for occurrences beyond its capability to reasonably comply during or as a result of such occurrences.***

3. The District has installed a water flow metering device within the supply line at a point near the Duplin and Pender County lines which is utilized for the purpose of measuring the quantity of water supplied, which meter is owned and maintained by the District. Town is entitled to request District, at its own expense, to have the meter calibrated for accuracy in the event of either a complete failure or faulty flow readings of the meter, but not more than *one* time during any calendar year basis if the Town questions the accuracy of the meter. A meter reading that is not in excess of *the* 2.0% above or below a calibration test result shall be deemed accurate. Any usage of water by the meter reading that a calibration reveals to be inaccurate by either being in excess of or less than the 2.0% standard, as defined above, shall be adjusted and either billed for or credited by use of the higher of the average water usage for the three month period next after the last prior calibration date of the meter, or by use of the average water usage for the *following* three month period after the current meter calibration. In the event the current calibration determines that a billing adjustment is appropriate, Town shall either bill for or credit District with the adjusted amount using the standards set out above. In determining the District's water usage for the period in question, the rate of usage and billing shall be in the same

percentage of variation as revealed by the current calibration. In the event of a complete failure of the meter, the meter shall be either repaired or replaced by District, and then calibrated for accuracy. In the event of a complete failure water shall be billed for at ***the presumed*** 375,000 GPD ***minimum***. The water meter shall be read by the Town on the same mutually agreeable day each month by the person(s) designated by Town. In that the meter is located in Town, Town does hereby grant District's representative reasonable access to the meter so District can verify the meter readings or other required actions relative to the maintenance and operation of the meter and lines.

4. So long as the meter and portion of the water line running from the meter to the Duplin/Pender County lines are not located in the Town of Wallace, District shall have the right to permit water users to tap onto the portions of the line located in Duplin County, and at all times have the right to permit water users to tap onto the portions of the line located in ***Duplin*** County during the period of this contract, but not thereafter.

5. The water line ***and meter that is located in Duplin County, as well as the lines, water booster*** and all related equipment, ***whether now or hereafter installed,*** (hereafter "Equipment"), shall be and is owned by District. ***The land upon which any of District's Equipment is located in Duplin County,*** that is owned or managed by Town is *hereby* leased to District during the term of this contract. Under the terms of the lease, District is entitled to go upon, repair, remove or otherwise manage and operate the Equipment during the term of this lease, but not there after.

6. Not later than the fifth (5th) day of each month, Town shall read the meter and provide District with an itemized printout of the amount of water provided by Town to District during the prior monthly period.

7. Within the earlier of the 15th day of each month or 15 days of the receipt of the water bill, District shall be required to pay Town for the amount of water delivered during the prior monthly period. In that District has guaranteed payment to Town of the equivalent of a minimum of 375,000 gallons per day, Town and District shall reconcile District's actual usage on an annual basis. As an example: in that the contract period begins on July 1, 2013, in its July, 2014 billing, *August, 2014,* Town shall provide District with the actual number of gallons delivered during the period from July 1, 2013 to June 30, 2014, and if District has used less than 375,000 GPD average, Town shall be entitled to bill District for the difference between what was billed on a monthly basis, and the minimum amount **of 375,000 GPD at the rate in effect for that year,** ***after crediting the District with all prior monthly payments.*** As of the date of this Agreement the rate shall be $1.84 per thousand gallons, which rate shall continue in effect for the remainder of the first year of this Agreement ***and continue in effect until revised as hereafter provided.*** Town shall have the right, on an annual basis and effective as of July 1 of each subsequent year, to adjust the rate *charged* District, which *rate increase* shall at no time *be* ***increased at a*** **higher** ***percentage*** **than the** ***increase of the*** rate Town charges ***its residential and corporate water users within the corporate limit of the Town of Wallace*** ***<u>or the rate charged to any bulk rate users.</u>*** Town shall notify District of any intended rate increase by the 15th ***day of March*** of each year to enable District to properly budget for such intended rate increase. At District's request, Town shall provide District with a copy of the rate schedule for its regular ***<u>in-town and</u>*** bulk rate customers.

8. In the event District should encounter a line breakage, shut down or substantial reduction in the production of its water plant, require major maintenance of some of its water infrastructure, fire, or seasonal demands resulting in the District being unable to satisfy its customers demand for water, and requiring more water from Town than the 375,000 minimum,

District shall, as soon as can reasonably *practical* provide notice to Town of the additional need and its estimated time and *increased amount* of such additional need. The parties recognize that in the event of a substantial need in excess of the minimum contracted amount, Town needs at least six (6.0) hours advance notice to fill its tanks and lines in order to maintain the delivered water pressure contemplated by this Agreement, as well as fulfill the needs of its citizens and residents of the Town as reasonably required. The parties acknowledge that Town's primary obligation is to provide sufficient water service and pressure to its citizens, and in the event of an emergency either within the Town and within its established fire districts, part of which are located in Pender County, Town shall have the authority and obligation to allocate water usage to its citizens and preservation of the property located in Town, as well as to its established fire districts to insure the reasonable availability of its water for such purposes, To the extent, when required, to Town shall be entitled to stop or curtail deliver of water to the District during the time of such emergency. In the event of such an emergency Town shall notify the District, as soon as reasonably practical, of the existence of the emergency, and the estimated time and extent it anticipates the water delivery to District will be resumed and/or increased. ***In the event water delivery to District is either curtailed or stopped for one or more days, that curtailment shall be factored in and a deduction provided in the Town's billing to District with respect to the minimum purchase amount of 375,000 GPD in the event the monthly total gallons delivered is less than that minimum.***

9. As a result of an analysis of Town's water, which is obtained exclusively through deep wells, it has been determined that it contains iron minerals. *Town* ***has agreed that it shall, at all times, provide potable water that does not exceed <u>0.20 mg/l of iron and not exceed</u> the Maximum Contaminant Levels (MCLs) for potable drinking waters as established by State and Federal Regulations, <u>which may be amended from time to time.</u> <u>Prior to requiring any remedial action</u>***

by Town with respect to any excess iron content or other contaminants in the supplied water, District shall notify Town of the perceived problem, set a date for the sampling of the provided water, and retrieve a sample of the provided water at or near the District's water meter, and have that sample tested by a licensed laboratory. As soon as reasonably practical District shall provide Town with a copy of the laboratory report of that sample. In the event the test shows iron content higher than the agreed upon 0.20 mg/l, or any contaminants in excess of the mandated State and Federal levels, District shall be entitled to stop receiving water from the Town until Town has cured the identified non-compliance. In the event District ceases receiving water from Town as a result of any of the above identified non-compliant reasons, Town shall, in its annual reconciliation of water usage, deduct that number of days from District's minimum required minimum water usage in the event District has not received the minimum number of gallons for that year. However, if the annual reconciliation shows that District has used in excess of its required minimum, no deduction shall be made. In that District already treats its water plant water with phosphates for iron and other minerals at its plant, ***in the event it has to further treat its own water or the water provided to it by Town, it is authorized to provide such treatment at or near the meter which is located in Duplin County within the site leased to District as heretofore provided, which treatment system shall be included within the definition of "Equipment", or at such other site as selected by the District, within its sole discretion.*** The course of action and location for the iron treatment shall be determined by District's engineers.

10. This Agreement is subject to the rules, regulations, ordinances and laws of the State and Federal Governments, and both parties agree that in the event of the necessity of obtaining or modifying any required permits, each will cooperate with the other in all respects.

11. In that the terms of this Agreement provide for an on-going contractual relationship between the parties for a substantial number of years, the parties agree that periodic meetings of either or both the Town and District's engineers and/or public works directors should take place not less than on a quarterly basis for the discussion of issues or problems that have or may arise from time to time. In the event of a problem that requires immediate action, a representative of the District or Town shall contact the other within a reasonable time of the discovery of the issue, and attempt to resolve it then. Any such issue may be communicated by telephone, telefax or e-mail, and if by telephone, shall be followed in writing by either telefax or e-mail within twenty-four hours of the telephone call.

12. The terms of this Agreement shall be in full force and effect from and after July 1, 2013, for a forty (40.0) year period ending on June 30, 2053, unless sooner terminated or curtailed by either mutual agreement of the parties, or by Federal or State action mandating the termination or curtailment of the terms of this Agreement. ***Provided, however, after the initial twenty year (20.0) period, District may terminate this Agreement, but must give one year advance notice in writing prior to any such termination.***

13. The terms of this Agreement may be modified by mutual agreement of the parties, which modification shall be in writing, and shall only be effective after approval by Town's Town Council and District's ***Board of Directors, which consist of the members of the Pender*** County ***Board of*** Commissioners, and the execution of the written document evidencing such modifications or amendments.

14. This agreement shall be interpreted under the laws and regulations of the State of North Carolina and Federal E.P. A. Regulations in effect at the time of this Agreement, and as modified

or amended from time-to-time thereafter.

15. In the event any part of this Agreement should be declared or is determined to be void as a matter of law, such part shall be deemed to be severed from the remaining portions, and the remaining portions shall remain in full force and effect.

16. In the event either party shall be determined to have breached any of the terms of this Agreement, the non-breaching party shall ***be required to provide the breaching party with written notice detailing the alleged breach, the remedy for curing the breach, and provide the breaching party 90 days within which to cure such breach. In the event the breaching party shall fail or refuse to cure the alleged breach within the cure period, the non-breaching party*** *shall,* without further showing, have the non-exclusive right to either: (a) terminate this agreement; or (b) to compel the breaching party to specifically perform the terms of this Agreement; (c), seek damages, or ***seek the both of the remedies set out in (b) and (c). Provided, however, the parties shall be subject to the mediation requirement set out hereafter in Section 17.***

17. Prior to instituting any legal action to enforce or terminate this Agreement, the parties shall participate in pre-litigation mediation under the same rules as if litigation had been instituted. In the event either party should seek Court action to compel the performance of this Agreement, seek a Declaratory Judgment as to the meaning of all or any part of this Agreement, and/or seek damages for the alleged breach, each of the parties hereby **WAIVES A TRIAL BY JURY**, and stipulates and agrees that the Superior Court of the County of the non-breaching party constitutes the proper venue of the action, and has both subject matter and personal jurisdiction to resolve any such litigation, and that the breaching party does hereby **WAIVE THE RIGHT TO SEEK A CHANGE OF VENUE UNDER ANY OF THE PROVISIONS OF SUBCHAPTER IV, ARTICLE 7, OF N.C.G.S. §1-76, ET. SEQ.** Notwithstanding the above waivers, the parties may

mutually agree upon a trial of any such dispute in the Superior Court of either Duplin or Pender County.

18. Notice shall be deemed to have been given by sending written notice by first class mail, telefax or e-mail addressed as follows, or such other persons and addresses as my be changed from time to time:

TOWN OF WALLACE

ATTENTION: TOWN MANAGER
P. O. BOX 189
WALLACE, N. C. 28466
FAX: (910) 285-
E-MAIL: mlivingston@townofwallace.com

Copy to: Richard L. Burrows, Town Attorney
E-mail: burrowsandhallatty@embarqmail.com

PENDER COUNTY
ATTENTION: COUNTY MANAGER
P. O. BOX 5
BURGAW, N. C.28425
FAX: (910) 259-1402
E-Mail: mduvall@pendercountync.gov

COPY TO TREY THURMAN, COUNTY ATTORNEY
E-MAIL: cwtiii@aol.com

19. By mutual agreement, the prior water supply and purchase contracts between the Town and District dated December 6, 1999, September 13, 2001, January 13, 2005, August 9, 2007, and April 29, 2010, are hereby rescinded and deemed void for all purposes.

20. ***In that Pender County has purchased a sewer treatment allocation from the Town of Wallace, and desires to enter into a sewer use utilization agreement with the Town, the parties agree that they will enter into a sewer use utilization agreement on or before June 14, 2014.***

IN TESTIMONY WHEREOF, the parties have executed this Agreement in **DUPLICATE ORIGINALS**, either of which shall constitute an original after authorization and approval of the respective Wallace Town Council and Pender County Board of Commissioners, the day and year first above written.

TOWN OF WALLACE

By:_____(SEAL)
Charles C. Farrior, Jr.–Mayor

ATTEST:

_____
Town Clerk

ROCKY POINT-TOPSAIL
WATER AND SEWER DISTRICT

By:_____(SEAL)
George Brown--Chairman County
Board of Commissioners

ATTEST:

_____
Dr. Michael N. Duvall- County Manager & Clerk to the Board of County Commissioners

APPROVED AS TO FORM:

_____
Richard L. Burrows, Attorney for Town of Wallace

_____
Trey Thurman, Attorney for District

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

_____
(Signature of finance officer)