

MINUTES OF A CONTINUATION OF THE JUNE 23, 1988 SPECIAL MEETING
OF THE MAYOR AND COUNCIL OF THE TOWN OF CHAPEL HILL,
MUNICIPAL BUILDING, MONDAY, JUNE 27, 7:00 P.M.

Mayor Jonathan B. Howes called the meeting to order. Council Members present were:

- Julie Andresen
- David Godschalk
- Joe Herzenberg
- Nancy Preston
- James Wallace
- Roosevelt Wilkerson, Jr.

Council Members Werner and Pasquini were absent, excused. Also present were Town Manager David R. Taylor, Assistant Town Managers Sonna Loewenthal and Ron Secrist and Town Attorney Ralph Karpinos.

OWASA - Chatham County Agreement on the Sale of Water

Council Member Andresen said that further discussions and negotiations had occurred since last Thursday and that additional compromises had been suggested and accepted. She thanked Council Member Wallace, OWASA Board Chair Edward N. Mann, Jr., Carrboro Alderman Judith Wegner and Chatham County Water Commissioner Bill Lowery for all their work and efforts in reaching an acceptable compromise. She said there was a resolution for the Council's consideration that had been adopted by the Chatham County Commissioners earlier that day in which Chapel Hill endorsed the water agreement with OWASA approval to be granted on June 28 and an effective date of the agreement set for September 30. She asked Mr. Lowery to comment on the compromise.

Mr. Bill Lowery, representing the Chatham County Commissioners, said that throughout all the negotiations, all of the parties involved had treated one another with respect and as equals. He said Chatham County Commissioners in a meeting today had adopted the resolution before the Chapel Hill Town Council. He said the Commissioners were looking forward to continued cooperation with Chapel Hill on matters of mutual interest.

Edward N. Mann, Jr., Chair of the OWASA Board of Directors, said he was pleased with the compromise proposal and was glad that it had worked out in an amiable manner. He said if the Council adopted the resolution this evening, the OWASA Board would vote on the proposal in a special meeting tomorrow.

COUNCIL MEMBER ANDRESEN MOVED, SECONDED BY COUNCIL MEMBER WILKERSON TO ADOPT RESOLUTION 88-6-27/R-0.1 TO SUPPORT THE APPROVAL OF THE SALE OF WATER TO CHATHAM COUNTY BY THE ORANGE WATER AND SEWER AUTHORITY AND FOR FURTHER DISCUSSIONS AND WORK ON JOINT PLANNING AND DEVELOPMENT ISSUES.

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Ralph Karpinos, Town Attorney, said that there should be a modification made to the agreement. He stated that on page two, paragraph one of the agreement for the sale of water where it stated that "...water supply allocations of 3.0 million gallons per day and 9.0 million gallons per day respectively;.." should be modified to indicate "..water supply allocations of 4.0 million gallons per day and 8.0 million gallons per day respectively.."

Manager Taylor asked if Chatham County had officially approved the proposed resolution and agreement. Mayor Howes replied yes and Mr. Lowery presented the Council with a signed copy of the resolution from Chatham County.

THE MOTION PASSED UNANIMOUSLY, (7-0).

The resolution, as adopted, reads as follows:

(See Attachment A)

COUNCIL MEMBER WALLACE MOVED, SECONDED BY COUNCIL MEMBER ANDRESEN TO ADJOURN THE MEETING. THE MOTION PASSED UNANIMOUSLY, (7-0).

The meeting adjourned at 7:16 p.m.

A JOINT RESOLUTION CONCERNING SOUTHERN ORANGE COUNTY AND NORTHERN CHATHAM COUNTY WATER SUPPLY AND PLANNING MATTERS (88-6-27/R-0.1)

WHEREAS, the Chatham County Board of Commissioners and the Chapel Hill Town Council have reviewed the proposed AGREEMENT FOR THE SALE AND TRANSFER OF SUPPLEMENTAL DRINKING WATER BY ORANGE WATER AND SEWER AUTHORITY TO CHATHAM COUNTY AND COOPERATIVE PLANNING FOR WATER SUPPLY FACILITIES AT JORDAN LAKE, dated June 28, 1988 and attached as appendix A to this resolution (hereinafter referred to as "AGREEMENT"); and

WHEREAS the Chatham County Board of Commissioners and Chapel Hill Town Council recognize the strong interest in cooperative planning for the provision of public water supply resources and facilities to serve the citizens and residents of the Towns of Chapel Hill and Carrboro, and Orange and Chatham Counties; and

WHEREAS the Chatham County Board of Commissioners and Chapel Hill Town Council recognize the mutual interest of Chapel Hill and Chatham County in working together to address planning and development issues affecting their respective jurisdictions, and

WHEREAS the Chapel Hill Town Council and the Chatham County Board of Commissioners wish to express their mutual respect for each governing board's good faith, wisdom, knowledge and fairness in representing the best long-term interests of their citizens, and in respecting the interests of neighboring jurisdictions;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Chatham County Board of Commissioners approves the AGREEMENT and directs _____ to execute said agreement on September 30, 1988; and that the Chapel Hill Town Council supports the proposed action by the OWASA Board of Directors to approve the AGREEMENT in form and substance on June 28, 1988 and to direct the Chair of the OWASA Board of Directors to execute said AGREEMENT on September 30, 1988.

2. That the Chatham County Board of Commissioners and the Chapel Hill Town Council acknowledge that they must act wisely in the interests of their citizens, and that their decisions can affect other jurisdictions. The governing boards pledge their best faith efforts to deal responsibly with issues of mutual interest, and acknowledge and respect each other's responsibilities and obligations in this regard.

4. That the Chatham County Board of Commissioners and the Chapel Hill Town Council undertake to work cooperatively with each other and other area jurisdictions to:

- a. identify specific areas of mutual concern, including development of coordinated land development policies that avoid incompatible land uses and consider potential effects

of development in one jurisdiction on other jurisdictions, protection of drinking-water watersheds, and planning for effective and aesthetically appealing transportation corridors;

b. reach initial agreement by September 15, 1988 on mutually-agreeable basic principles that would guide the jurisdictions in developing coordinated and complementary land-use plans and growth-management policies, and taking other steps needed to accomplish mutual goals;

c. develop a statement of procedures and timetable goals by September 15, 1988 as a framework for on-going cooperative efforts in these areas.

5. That the Chapel Hill Town Council supports the interest of Chatham County in securing an adequate supply of water in a timely fashion. Accordingly, the Council agrees that if the AGREEMENT between OWASA and Chatham County, referred to in paragraph 1 of this resolution, is not in fact executed by September 30, 1988, as a result of action on the part of the Chapel Hill Town Council, Chapel Hill shall ensure that Chatham County is reimbursed in an amount not to exceed \$50,000 for any engineering costs incurred, during the period June 28, 1988 and the date of such action by the Chapel Hill Town Council on or before September 30, 1988, in establishing one or more water system interconnections between Chatham County and OWASA as described in section 3 of the AGREEMENT.

6. That the Chatham County Board of Commissioners and the Chapel Hill Town Council express to each other their appreciation for the cooperative spirit in which this joint resolution is adopted, and pledge their best efforts to comply with its terms and intent.

Adopted this the 27th day of June, 1988 by the Chatham County Board of Commissioners and the Chapel Hill Town Council

CHATHAM COUNTY

Chairman, Chatham County Board of Commissioners

(Attest) Clerk to the Commissioners

Date: _____

Date: _____

TOWN OF CHAPEL HILL

Mayor, Town of Chapel Hill

(Attest) Town Clerk

Date: _____

Date: _____

DRAFT

June 28, 1988

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**AGREEMENT FOR THE SALE AND TRANSFER OF SUPPLEMENTAL DRINKING WATER SUPPLY
BY ORANGE WATER AND SEWER AUTHORITY TO CHATHAM COUNTY AND COOPERATIVE
PLANNING FOR WATER SUPPLY FACILITIES AT JORDAN LAKE**

NORTH CAROLINA
ORANGE COUNTY
CHATHAM COUNTY

THIS AGREEMENT, made and entered into and executed in duplicate originals, this the ___ day of _____, 1988, by and between Orange Water and Sewer Authority, a public body politic and corporate, organized and existing under the provisions of Chapter 162A of the North Carolina General Statutes, with its principal office in Carrboro, North Carolina, hereinafter referred to as "AUTHORITY," and CHATHAM COUNTY, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, the AUTHORITY owns and operates a water supply, treatment and distribution system, which includes a Water Treatment Facility classified as Class A by the Department of Human Resources, and said facilities serve the Town of Chapel Hill, Town of Carrboro and surrounding areas located primarily in southeastern Orange County; and

WHEREAS, the COUNTY owns and operates a water distribution system, which presently serves certain portions of the COUNTY; and

WHEREAS, the AUTHORITY and COUNTY desire to obtain additional drinking water supplies and share existing and future supplies at such time as sufficient capacity may be available to meet the needs of their respective customers during interim periods of time when additional or expanded water supplies or facilities are being developed, and during water shortage emergencies, including but not limited to those caused by treatment plant outages, power failures, water main breaks, major fires, supply contamination, or extended droughts; and

WHEREAS, the COUNTY has prepared a "Water Feasibility Study" which includes recommended water supply, treatment and distribution improvements necessary to meet the projected water needs of present and planned growth and development within the COUNTY through the year 2020 and the AUTHORITY has a Long-Range Capital Improvements Program which identifies proposed improvements to meet the water demands of its customers; and

WHEREAS, the COUNTY has determined that the capacities of the existing water supplies and treatment facilities within the COUNTY are inadequate to meet the projected service needs of the COUNTY, and the AUTHORITY, upon request of the COUNTY, has determined that it has the capability to temporarily provide a supplemental supply of finished drinking water to the COUNTY; and

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WHEREAS, the COUNTY has determined that it will request Level I and Level II B. Everett Jordan Lake (Jordan Lake) water supply allocations of 4.0 million gallons per day and 8.0 million gallons per day, respectively; and

WHEREAS, the AUTHORITY has determined that it may request a Level I allocation and will request a Level II water supply allocation from Jordan Lake and will need to cooperatively or independently develop water supply-related facilities at said Lake; and

WHEREAS, the COUNTY proposes to proceed with the development of long-term water supply facilities at Jordan Lake within five (5) years after receiving a Level I Jordan Lake water allocation; and

WHEREAS, the COUNTY and AUTHORITY have determined that the interests and welfare of the public in their respective jurisdictions will best be served by cooperative planning and development of water supply intake facilities and raw water transmission and water treatment facilities at Jordan Lake and/or other related water supply facilities and the COUNTY and AUTHORITY desire to achieve the substantial advantages potentially available through cooperative action in water supply planning and management which could probably not be achieved individually; and

WHEREAS, the COUNTY has planning and zoning jurisdiction over a portion of the watershed in which University Lake, one of the AUTHORITY's principal water supply sources, is located and the COUNTY recognizes the need and has taken action to protect the quality of said Lake; and

WHEREAS, the COUNTY and AUTHORITY are authorized under N.C. General Statutes to enter into agreements for the joint construction, operation and provision of water and wastewater facilities and services.

NOW, THEREFORE, the governing bodies of the parties hereto have determined that the public health, safety and welfare will be served and benefited by their cooperation, mutual undertakings and agreement as hereinafter set out; and, in consideration of the benefits, assistance and mutual obligations to be received and performed by the parties hereunder, and especially in consideration of protection of the water supply sources and making a cooperative effort to alleviate the hardship and the threat to public health, safety and welfare caused by limitations of supply capacity, drought and other water system emergencies, the COUNTY and AUTHORITY, for themselves, their successors and assigns, do mutually agree as follows:

SECTION 1. COOPERATIVE INTENT

The parties enter into this Agreement with the intent of proceeding cooperatively in development of water resources and facilities to support their respective service areas and, upon future mutual agreement, to enter into such joint administrative, financial, engineering or construction ventures which they determine support the common best interests of their constituencies in assuring an adequate, high quality water supply.

Not compromising or modifying references in other sections and without foreclosing joint undertakings not herein setforth, the parties agree to:

- (a) Cooperate in the application for and development of water allocations from the Jordan Lake;
- (b) Consider the joint funding, construction and management of water treatment, pumping and transmission facilities to utilize allocations of water supply from Jordan Lake, in the event said lake is determined suitable for use as a drinking water supply source;
- (c) Cooperatively evaluate the impact of development activities within the University Lake watershed, including the portion within Chatham County, and work to protect the quality of said water supply source; and
- (d) Work cooperatively with local governments within Orange County on issues such as land use planning, transportation planning and such other common interests as the same may affect development and delivery of public services within southern Orange County and northern Chatham County, and participate actively with said governmental units in developing coordinated and complementary land use plans and growth management policies.

SECTION 2. PERIOD OF AGREEMENT

- 2.1. This Agreement shall be approved on June 28, 1988 to be executed and effective on September 30, 1988 and shall continue in full force and effect, unless terminated as herein provided, for a period of five (5) years therefrom.
- 2.2. This Agreement may be extended upon mutual agreement of the parties.

SECTION 3. ESTABLISHMENT OF SYSTEM INTERCONNECTION

- 3.1. The parties hereby agree to establish one or more water system interconnections which will initially permit water to be transferred from the AUTHORITY to the COUNTY. The initial point of connection shall be in the vicinity of the boundary line separating Orange County and Chatham County, as shown on Exhibit A which is attached hereto and included as a part of this Agreement. Other future interconnection locations may be mutually agreed upon by the AUTHORITY and COUNTY and may provide the capability for transfer of water from the COUNTY to the AUTHORITY. The point of delivery of water transferred under the provisions herein shall be at the point of connection between the AUTHORITY's water system and the COUNTY's water system.
- 3.2. The COUNTY, at its own expense, will extend and install a 12-inch water main from the COUNTY's existing 12-inch water main located along US 15/501 to connect to the AUTHORITY's existing 8-inch water main located near the intersection of US 15/501 and State Road 1919. Said connection shall be completed in accordance with sound engineering practices as mutually agreed upon by both parties. Other approved interconnections between the water systems of the AUTHORITY and COUNTY shall be made under approved, comparable conditions.

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- 3.3. The AUTHORITY shall install, at the COUNTY's expense, the required 6-inch water meter, meter vault and required appurtenances at the point of interconnection. The COUNTY shall pay the AUTHORITY for the full cost of said improvements within thirty (30) days after receipt of an invoice from the AUTHORITY. The AUTHORITY shall own said facilities and be responsible for maintenance of the flow measurement equipment located at the point of interconnection. The cost of said maintenance shall be included in the determination of the charges for water as provided in Section 5 below. The AUTHORITY shall be responsible for maintenance of complete and accurate flow records with the same being furnished to the COUNTY. The COUNTY shall, upon reasonable notice, have access to such flow records and flow measurement facilities for the purpose of taking readings and checking the same for accuracy.
 - 3.4. The AUTHORITY and COUNTY agree to evaluate the potential for the COUNTY to transfer finished water to the AUTHORITY during water emergencies of the AUTHORITY or otherwise and the need for establishment of additional water system interconnections which will benefit both parties. The establishment of additional system interconnections may be made without amendment of this Agreement.

SECTION 4. TRANSFER OF WATER

- 4.1. Upon request of the COUNTY, the AUTHORITY shall endeavor to deliver treated water to the COUNTY in the manner and quantity prescribed by this Agreement. Upon written request from the COUNTY and upon determination by the AUTHORITY that it has adequate water supply capacity from its own or other resources, the AUTHORITY will deliver to the COUNTY a quantity of treated water as defined herein. Such water will be delivered to the COUNTY at a point of metered interconnection of the water system of the COUNTY with the water system of the AUTHORITY.
- 4.2. Upon request of the AUTHORITY, the COUNTY shall endeavor to deliver treated water to the AUTHORITY at future points of metered interconnection and in a quantity as may be determined. Upon written request from the AUTHORITY and upon determination by the COUNTY that it has adequate water supply capacity from its own or other resources, the COUNTY will deliver to the AUTHORITY a quantity of water as mutually determined. In the event the COUNTY transfers water to the AUTHORITY during the period of this Agreement, the AUTHORITY shall at the time of issuing the next monthly bill for services to the COUNTY reduce the applicable quantity of water billed to the COUNTY for the preceding month by the quantity of water transferred to the AUTHORITY by the COUNTY during that month. The COUNTY shall not be required to pay surcharges or penalties for excess usage where such excess usage has been caused by the transfer of water from the COUNTY to the AUTHORITY.
- 4.3. The AUTHORITY's Executive Director or his designee shall administer this Agreement, including the review and approval of water demand schedules, for the AUTHORITY and the AUTHORITY agrees to notify the COUNTY in writing as to what person or persons have been so designated. The COUNTY's Manager or his designee shall administer this Agreement for the COUNTY and the COUNTY agrees to notify the AUTHORITY in writing as to what person or persons have been so designated.

- 4.4. Except as otherwise provided in, and under the terms of, this Agreement, the COUNTY shall have the privilege to receive water from the AUTHORITY in accordance with the following five-year general Demand Schedule (figures in gallons).

Fiscal Year*	Daily Demand		Minimum	Monthly Demand	
	Average	Maximum		Average	Maximum
1990	125,000	175,000	3,000,000	3,750,000	4,500,000
1991	190,000	266,000	4,560,000	5,700,000	6,840,000
1992	260,000	364,000	6,240,000	7,800,000	9,360,000
1993	330,000	462,000	7,920,000	9,900,000	11,880,000
1994	400,000	560,000	9,600,000	12,000,000	14,400,000

* Fiscal Year begins on July 1 of the preceding calendar year and ends on the immediately following June 30.

Water transfers to the COUNTY may begin prior to July 1, 1989 under comparable terms and conditions included in this Agreement, provided that the AUTHORITY determines it has an adequate water supply available.

- 4.5. For each Fiscal Year of the AUTHORITY beginning on July 1 and ending on the immediately following June 30 thereafter during the term of this Agreement, the COUNTY shall submit to the AUTHORITY, on or before April 1 of each year of this Agreement, a proposed Demand Schedule for the remaining period of the agreement; provided, however amended Monthly Demand- Minimum quantities shall not be less than the Monthly Demand- Minimum quantities specified in the above Demand Schedule. In the event that a proposed Demand Schedule or an amended version thereof includes a request for water in excess of amounts specified in Paragraph 4.4, the AUTHORITY shall consult with its member governments before giving its approval. Upon the AUTHORITY's approval of the proposed Demand Schedule or an amended version thereof, said schedule shall supersede the Demand Schedule previously in effect.
- 4.6. The quantity of water available in Fiscal Year 1990 is dependent upon the supply available in the AUTHORITY's existing reservoirs and the availability of water for purchase by the AUTHORITY from other water providers. The AUTHORITY fully expects that upon completion of the AUTHORITY's Cane Creek Reservoir project and the Jones Ferry Road Water Plant expansion project the AUTHORITY will be able to provide, from the AUTHORITY's supply sources and facilities, the water quantities specified in the above demand schedule.
- 4.7. Notwithstanding the Demand Schedule in Paragraph 4.4 above, the quantity of water, if any, available from the AUTHORITY to the COUNTY or the ability of the AUTHORITY's system to transfer finished water to the COUNTY shall be determined by the AUTHORITY, in its sole discretion in light of the following factors: a) the amount of raw water in the AUTHORITY's existing or future water supplies at such time as they are available; b) present water demand, including demands under normal or emergency conditions; c) the amount of water available for purchase by the AUTHORITY from other water purveyors; d) water filtration capacity; and e) water distribution mains, pumps, facilities and capacities and operating constraints thereto.

At any time the volume of water from the raw water storage facilities of the AUTHORITY or from supplemental water sources readily available to the AUTHORITY from other water purveyors is determined to be insufficient to adequately meet the normal anticipated water requirements within the AUTHORITY's service area, then the AUTHORITY shall supply to the COUNTY only the quantity of water available and required to meet an emergency water need of the COUNTY, as determined jointly by the COUNTY's Manager and the AUTHORITY's Executive Director. Such reduction in supply shall continue until the AUTHORITY determines that it has an adequate quantity of water supply available to meet the respective water demands of the AUTHORITY's customers and the COUNTY.

- 4.8. The quantity of water provided by one party to the other party shall, at the point of interconnection, meet the applicable purity standards of the State of North Carolina and the Federal Government; however, each party shall be responsible for the quality of water within its own water distribution system. Each party shall install or cause to be installed on their respective water systems, such devices, equipment or materials necessary to prevent the contamination of the water at the point of delivery of of the other party.
- 4.9. The AUTHORITY may request that, during the period in which the AUTHORITY is providing water under this Agreement, water use restrictions be imposed in the COUNTY's service area at least equal to those that are imposed in the AUTHORITY's service area. The AUTHORITY may make the provision of water to the COUNTY contingent upon such water use restrictions being imposed in the COUNTY's service area. During a water emergency, the AUTHORITY may also temporarily reduce or discontinue the transfer of water to the COUNTY; provided, however, that during Stage I and Stage II of the Water Conservation Ordinance in effect in the AUTHORITY's service area, water transfers by the AUTHORITY to the COUNTY shall be provided under substantially the same water use restrictions as water transfers by the AUTHORITY under agreement with other parties.
- 4.10. The parties to this Agreement shall not be responsible or liable in any way to any person, firm, corporation, County, municipality, or any water user for any damages resulting from interruption or discontinuance of the delivery of water or services or fluctuations, failures or limitations in pressures or rate of flow from one party to the other, or failure to comply with any Federal or State standards applicable to the quality or quantity of drinking water.
- 4.11. This Agreement does not preclude in any way or at any time either party from providing treated water through its water system to any other party.

SECTION 5. APPLICABLE RATES FOR WATER PURCHASES

- 5.1. The COUNTY agrees to pay the AUTHORITY for water service in accordance with the commodity rates (including the Monthly Demand- Minimum charges herein described) and applicable surcharges and penalties as specified in this Agreement. Said rates and charges shall become effective the date upon which the interconnection described in this Agreement is completed and the transfer of water commences upon agreement of the parties hereto. It is mutually understood and agreed that the rates and charges for water provided by the AUTHORITY to the COUNTY, and any changes or revisions thereof, shall be fair and reasonable.

5.2. The charge for water the AUTHORITY provides to the COUNTY pursuant to the provisions of Section 4 of this Agreement shall be the AUTHORITY's direct and indirect cost of such water and shall be based on the unit costs of all expenses incurred to produce water, including but not limited to the costs of: energy and electricity; chemicals; materials; testing; maintenance; insurance; taxes; depreciation; debt service; salaries and benefits of employees directly involved in the operation of the AUTHORITY's water treatment plant and system, water purchases from other water purveyors; and other direct and indirect costs normally incurred in the supply, treatment, and distribution process and incremental costs of pertinent administrative services.

5.3. Subject to the additional provisions of this Section, the commodity charge for water provided by the AUTHORITY to the COUNTY shall be seventy-five percent (75%) of the rate charged by the AUTHORITY to retail water customers within its service area.

5.4 The COUNTY agrees to pay to the AUTHORITY, or other party as may be mutually agreed to by the parties hereto, an additional surcharge of up to \$0.01/1,000 gallons of water purchased from the AUTHORITY, which shall be used solely for funding of regional water quality monitoring programs and activities which benefit the parties to this Agreement and the general public of the region; provided, however, said charge shall not apply if the COUNTY is paying an equivalent amount of money for said purpose.

5.5. Water charges shall apply to all water delivered through the meter(s) at the point(s) of interconnection, including that necessary for flushing of interconnection lines.

5.6. In the event that the quantity of water transferred to the COUNTY during any month is less than the Monthly Demand- Minimum for the applicable Fiscal Year, the charge for service for that month shall be equal to the applicable water rate (charge per 1,000 gallons plus applicable surcharges) multiplied by the Monthly Demand- Minimum, as specified in Paragraph 4.4 above; provided, however that if the AUTHORITY determines it is unable to supply said volume of water due to shortage of supply or other water emergency, the Monthly Demand- Minimum shall be reduced by the amount under the average daily demand delivered during the period in which the AUTHORITY could not provide the Daily Demand- Average.

5.7. In the event the AUTHORITY is purchasing finished water from another system during any part of the time it is also providing water to the COUNTY, the AUTHORITY may impose upon incurrence an additional reasonable surcharge applicable to water sales to the COUNTY. Said surcharge shall permit the AUTHORITY to adjust the water rate to reflect the additional cost of providing water to the COUNTY.

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- 5.8. In the event the quantity of water transferred by the AUTHORITY to the COUNTY, excluding the quantity of water transferred to the AUTHORITY by the COUNTY, exceeds the Daily Demand- Maximum or Monthly Demand- Maximum quantity specified for the applicable Fiscal Year in the Demand Schedule in Paragraph 4.4 above, then the water commodity rate for all water transferred to the COUNTY during the month, excluding the quantity which is transferred to the AUTHORITY by the COUNTY, shall be equivalent to the commodity rate charged by the AUTHORITY to retail water customers within its service area.
 - 5.9. It is recognized that an emergency such as a fire or major water line break may occur, thereby necessitating the transfer of a quantity of water greater than that provided in Paragraph 4.4 above. The AUTHORITY's Executive Director or his designee is authorized to permit the maximum daily transfer to be exceeded, without penalty to the COUNTY, in an amount and for sufficient period of time determined necessary in his discretion, provided the AUTHORITY's Executive Director or designee is notified by telephone when the emergency demanding the excess water is discovered by the COUNTY and that subsequently the emergency is properly documented in writing to the AUTHORITY.
 - 5.10. The AUTHORITY reserves the right to make periodic revisions to the rates, charges and surcharges applicable for water service to the COUNTY, in accordance with cost increases in the components of treating and providing water to the COUNTY. If the AUTHORITY determines it necessary to consider a rate revision, the AUTHORITY will provide a written notice to the COUNTY of the intent to consider such actions. The COUNTY will be given 45 calendar days from the date of written notice to submit written comments to the AUTHORITY for consideration in the rate evaluation process; provided, however, that such notice shall not be required in instances where increases or surcharges arise from an immediate, unusual or emergency event or from billing adjustments provided under Paragraphs 5.4, 5.7 and 5.8.
 - 5.11. Not later than the tenth (10th) day of each month, the AUTHORITY shall furnish to the COUNTY an itemized statement of the amount of water and charges for such water furnished during the preceding month. The COUNTY shall make said payment in full not later than the thirtieth (30th) day of each month for water purchased during the previous month. In addition and without waiving its rights to pursue other legal and equitable claims, the AUTHORITY shall have the right to suspend service to the COUNTY upon the COUNTY's failure to pay such charges within the time specified and to continue such suspension until such charges have been paid in full; provided, however, that the AUTHORITY has given the COUNTY a ten (10) day written notice prior to the date that water services are to be suspended.
 - 5.12. The COUNTY agrees and covenants to budget and authorize the payment of appropriate funds for the administration and execution of this Agreement and to take whatever action is necessary to make all payments and disbursements pursuant to the terms of this Agreement.

SECTION 6. COOPERATIVE WATER SUPPLY PLANNING AND DEVELOPMENT EFFORTS

6.1. The AUTHORITY and COUNTY agree to fully consider cooperative approaches for utilizing Jordan Lake as a future water supply source and to consider the potential for cooperative development of water supply, treatment and transmission facilities at Jordan Lake. The parties agree that they shall evaluate water quality monitoring data for Jordan Lake and that their determination to use said source shall be subject to evidence that such use, in accordance with available and appropriate water treatment technology, will be in the public interest. The AUTHORITY and COUNTY agree to develop, in cooperation with other interested parties, for further consideration a proposed written agreement for their cooperative action in the utilization of Jordan Lake as a future water supply, which agreement shall provide for, but will not be limited to, the following:

- (a) mutual planning and design of water supply facilities;
- (b) acquisition of a water treatment plant site;
- (c) construction and operation of water system facilities;
- (d) method of financing facility construction and operation; and
- (e) capacity allocations to be held by each participating or contracting entity.

6.2. In the event that either party determines it necessary and appropriate to initially develop water supply-related facilities at Jordan Lake independent of the other party, it will provide the other party with the opportunity to review and comment on the proposed facility plans at least sixty (60) days prior to the date of advertising for bids for completion of said improvements. Prior to finalizing plans and specifications for said improvements at Jordan Lake, each party shall fully consider the written comments submitted by the other. The COUNTY and AUTHORITY agree to develop said facilities in a manner which can be readily expanded and which do not preclude future cooperative approaches to utilizing Jordan Lake as a water supply source for both parties.

6.3. The COUNTY acknowledges the AUTHORITY's plans to utilize Jordan Lake as a future water supply and the AUTHORITY's need to develop, either independently or in cooperation with other parties, water supply intake, storage, treatment and transmission facilities near the Lake. The COUNTY agrees to support the AUTHORITY's efforts to develop said facilities and the major finished water transmission mains to connect to the AUTHORITY's water distribution system. The COUNTY also agrees to support the issuance of any required local, State or Federal regulatory approvals required for construction and operation of said facilities.

6.4. Both parties agree that there may be further benefits to be derived from the participation of other parties in the evaluation of further alternatives for cooperative water supply development and utilization and hereby express their commitment to work together with such other parties in said efforts. Nothing in this Agreement shall prohibit the AUTHORITY from development of water withdrawal, treatment and transmission facilities utilizing Jordan Lake either independently or in joint venture with any other public agency or from furnishing water to any existing municipality.

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- 6.5. The COUNTY agrees to make all reasonable efforts through land use and zoning controls and regulations to maintain the WS-I classification of the University Lake watershed. The COUNTY agrees to fully consider the water quality protection measures and standards recommended by the AUTHORITY.

SECTION 7. SERVICE AREA UNDERSTANDING

- 7.1. The AUTHORITY recognizes that the COUNTY has the responsibility for land use planning and growth management decision making within the COUNTY's jurisdiction and that the COUNTY has a plan for providing public water services within said area. The COUNTY recognizes that the AUTHORITY is the primary organization responsible for providing public water service in southern Orange County.
- 7.2. Except as provided herein, the AUTHORITY agrees that it will not serve any party within the Chatham County over which the COUNTY has or may have planning and zoning jurisdiction without the written consent of the COUNTY Board of Commissioners; provided, however, that the AUTHORITY may, without the prior consent of the COUNTY Board of Commissioners: (a) continue to serve those properties within Chatham County which front on the AUTHORITY's water system in existence as of the date of this Agreement. Said properties are generally shown on Exhibit A attached hereto and made a part of this Agreement; (b) after notice to these parties extend services where formally requested or directed to do so by a State or Federal public health agency or court of law having regulatory jurisdiction over the parties hereto; and (c) extend wholesale or retail services to customers located within the corporate limits of a presently existing municipality, upon authorization by the municipality.
- 7.3. The COUNTY agrees that it will not supply water to any party located within Orange County without the prior written approval of the AUTHORITY and the governing board with planning and zoning jurisdiction in said area.
- 7.4. The parties agree that either party may install lines, meters, pumps, tanks, treatment facilities and other appurtenance and facilities within the service area of the other party, provided, specifically, that no retail services may be provided by either party through such facilities unless otherwise provided herein.

SECTION 8. TERMINATION OF AGREEMENT

- 8.1. Either party may terminate this Agreement as of the end of any current term by mailing written notice thereof by registered mail, return receipt requested, to the other not later than one-hundred and eighty (180) days prior to the end of such current term.
- 8.2. The AUTHORITY may unilaterally terminate this Agreement if the applicable charges for water or other charges, as provided herein, are not paid by the COUNTY within sixty (60) days of the date said payment is due.

8.3. The agreement for the COUNTY to pay for a monthly minimum quantity of water and for the AUTHORITY to provide the quantities of water herein described presupposes that the COUNTY will construct the necessary interconnection to the AUTHORITY's water system on or before July 1, 1989. The COUNTY will promptly proceed on securing financing and designing the required interconnection line. The COUNTY shall notify the AUTHORITY no later than October 15, 1988 that it has contracted for the water line and interconnection to be constructed. Should the COUNTY fail to contract for the water line by October 15, 1988, the water transfer and sale provisions of this Agreement (Sections 3, 4, and 5 and Subsection 8.2) shall no longer be in effect and the AUTHORITY will not be obligated to furnish water to the COUNTY; however, the remaining provisions of this Agreement shall nevertheless remain in full force and effect except upon mutual agreement of the parties hereto.

SECTION 9. GOVERNING LAWS; AMENDMENTS

9.1. The terms and conditions of this Agreement shall be subordinate to the provisions of the AUTHORITY's Bond Order dated March 7, 1985, agreements of sale and purchase with the Town of Chapel Hill and the Town of Carrboro, and all other applicable legal and regulatory requirements, the provisions and conditions of which shall control in the instance of any conflict therebetween. If any of the terms and conditions of this Agreement are determined to be null and void, the remaining portion of this Agreement shall nevertheless remain in full force and effect except that in such instance the parties hereto may, upon mutual agreement, declare the entire remaining provisions of the Agreement to be terminated, null and void.

9.2. This Agreement may be amended from time to time by written amendment duly authorized and executed on behalf of the parties with the formality and prerequisites as are applicable to the execution of this Agreement.

9.3. This Agreement constitutes the entire agreement between the parties relating to the provision of services to and for the COUNTY by the AUTHORITY and supersedes all prior negotiations and representations relating in any way to the sale and transfer of water by the AUTHORITY to the COUNTY.

9.4. Any litigation arising out of this Agreement shall be determined in Orange County Superior Court.

IN TESTIMONY WHEREOF, the undersigned Chairman of the Board of Commissioners of Chatham County, North Carolina, and the Executive Director of Orange Water and Sewer Authority, each having been duly authorized by Resolution of the respective governing boards to execute this Agreement, have duly executed this Agreement for and on behalf of the COUNTY and the AUTHORITY to evidence the undertakings entered into as hereinabove shown in particular. The respective official seals of the COUNTY and the AUTHORITY have been affixed hereto by authority of the respective governing bodies, all as of the day and year first above written.

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ORANGE WATER AND SEWER AUTHORITY

ATTEST:

Secretary-Treasurer

CHATHAM COUNTY

Chairman
Board of Commissioners

ATTEST:

County Clerk

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

Date

Finance Officer
Chatham County

Date

Finance Officer
Orange Water and Sewer Authority

This document is hereby approved as to form and legality.

Date

Counsel to the Authority

Date

Counsel to Chatham County

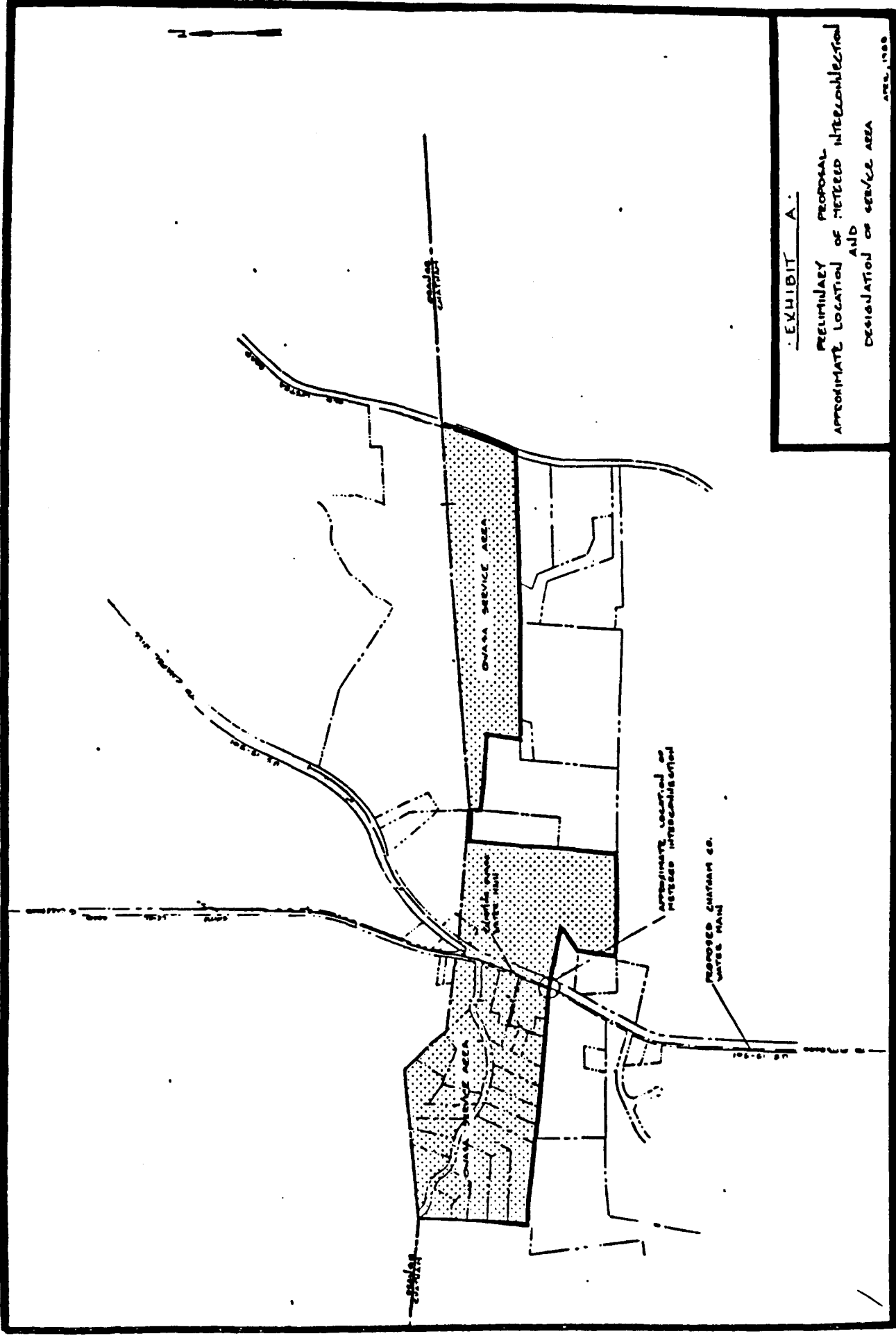


EXHIBIT A
 PRELIMINARY PROPOSAL
 APPROXIMATE LOCATION OF RETEED INTERCONNECTION
 AND
 DESIGNATION OF SERVICE AREA
 APR. 1988

