

# CHATHAM COUNTY, NORTH CAROLINA

## AMENDED LEASE AGREEMENT

THIS AMENDED LEASE AGREEMENT (“Amended Lease”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Commencement Date”) by and between Fitch Creations, Inc. d/b/a Fearrington Utilities, a North Carolina corporation (“FCI”), and ONSWC-Chatham North, LLC, a North Carolina limited liability company (“ONSWC-Chatham North”) (individually referred to as a “Party” and collectively referred to as the “Parties”).

### WITNESSETH:

WHEREAS, FCI is the developer of the Fearrington Village Subdivision located in Chatham County, North Carolina;

WHEREAS, pursuant to that Asset Purchase Agreement entered into on \_\_\_\_\_, 20\_\_, by and between FCI and ONSWC-Chatham North, FCI agreed to sell to ONSWC-Chatham North and ONSWC-Chatham North agreed to purchase from FCI wastewater assets that are related to the provision of wastewater service for the Fearrington Village Subdivision;

WHEREAS, certain of those wastewater assets -- specifically, a wastewater treatment facility (“Wastewater Treatment Facility”) and two lift stations (the “Barnsley Station” and the “Weathersfield Station”) (collectively, the Wastewater Assets”) -- are located on real property owned by FCI (the “Real Property”); and

WHEREAS, ONSWC-Chatham North desires to lease from FCI, and FCI desires to lease to ONSWC-Chatham North, the portions of the Real Property on which those Wastewater Assets are located, in accordance with the terms and conditions of this Amended Lease.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the Parties hereto agree as follows:

1. Premises. FCI hereby grants to ONSWC-Chatham North a leasehold interest in all or part of the Real Property (the “Premises”) and easements for ingress and egress to the Premises, as more particularly identified in Exhibit 1 hereto. FCI shall maintain access to the Premises in a free and open condition so that no interference is caused to ONSWC-Chatham North’s use of the Premises.

2. Term. The initial term of the Amended Lease shall be ten (10) years (the “Initial Term”) from the Commencement Date. ONSWC-Chatham North has the right to extend the Amended Lease for terms of the Lease for renewal terms of ten (10) years (“Renewal Term(s)"). The Amended Lease will automatically extend for each successive Renewal Term unless: i) the Amended Lease is terminated pursuant to the terms and conditions contained in Section 11 hereof; or ii) ONSWC-Chatham North notifies FCI in writing of its intention not to renew the Amended Lease prior to the expiration of the Initial Term or any Renewal Term.

3. Consideration. The Parties agree that ONSWC-Chatham North shall pay to FCI a one-time fee of Ten Dollars (\$10.00) as consideration for the lease of the Premises.

4. Permitted Use. ONSWC-Chatham North is permitted to use the Premises for the purpose of constructing, maintaining, and operating the Wastewater Assets and for other uses which are incidental to the construction, maintenance and operation of the Wastewater Assets (“Permitted Use”) and for no other purpose. FCI shall not interfere with ONSWC-Chatham North’s use of the Premises for the Permitted Use.

Notwithstanding the foregoing, the Parties anticipate that the Wastewater Treatment Facility shall be taken out of service during the Initial Term. In addition, the Parties anticipate that ONSWC-Chatham North shall construct a new lift station in the location of the Wastewater Treatment Facility prior to the time that the Wastewater Treatment Facility is taken out of service.

ONSWC-Chatham North shall use the Premises for the Permitted Use and for no other purposes.

ONSWC-Chatham North acknowledges that the Wastewater Assets are located within established residential neighborhoods and, therefore, agrees to keep

the Premises clean and free from litter, debris, unused equipment, etc. and to keep noise and odor to within industry standards.

5. Access. FCI shall continue to have access to Premises, and, therefore, ONSWC-Chatham North shall provide such access, for example by providing copies of keys to any perimeter fence gates, to FCI. FCI shall provide notice to ONSWC-Chatham North prior to entering the Premises.

6. Taxes. ONSWC-Chatham North shall pay, when due, any personal property taxes assessed on or attributable to the Wastewater Assets and reimburse FCI for any real property taxes assessed on the Premises.

7. Condition of Premises. ONSWC-Chatham North accepts the condition of the Premises on an “AS IS, WHERE IS” basis “WITH ALL FAULTS” and without any representation or warranty from FCI as to environmental condition or fitness for particular purpose.

8. Assignment and Subletting. ONSWC-Chatham North shall not enter into a sublease related to the Premises. Either Party may assign this Amended Lease with a minimum 30-day prior written notice to and the consent of the other Party, which shall not be unreasonably withheld.

9. Events of Default. Any breach of any covenant or agreement in this Amended Lease by either Party that is not cured within 30-days written notice of such breach shall be an Event of Default. The cure period may be extended if the defaulting party is making commercially reasonable efforts to cure.

10. Compliance with Laws. ONSWC-Chatham North shall comply with all applicable federal, state and local laws, regulations, and ordinances when using the Premises.

11. Termination. This Amended Lease may be terminated by either Party upon the occurrence of an Event of Default.

12. Indemnification. The Parties shall indemnify and hold harmless each other and each other’s successors, assigns, officers, directors, members, managers, officials, partners, agents, employees, contractors, and subcontractors from and

against any and all liabilities, damages, claims, fines, causes of action, suits, judgments, and losses (including reasonable attorneys' fees and expenses) arising from third-party claims or governmental actions relating to ONSWC-Chatham North's use of Premises, to the extent caused by a material breach of contract, negligent act or omission of the indemnifying Party or its successors, assigns, officers, directors, members, managers, officials, partners, agents, employees, contractors, and subcontractors.

ONSWC-Chatham North shall indemnify and hold harmless each other and each other's successors, assigns, officers, directors, members, managers, officials, partners, agents, employees, contractors, and subcontractors from and against any and all liabilities, damages, claims, fines, causes of action, suits, judgments, and losses (including reasonable attorneys' fees and expenses) arising from third-party claims or governmental actions relating to any environmental damages or liabilities caused by ONSWC-Chatham North's use of the Premises.

13. Enforcement of Lease. The failure of either Party hereto to enforce any of the provisions of this Amended Lease or the waiver thereof in any instance by either Party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.

14. Notice. Any notice of delivery required to be made hereunder shall be made by mailing, via certified mail return receipt requested, or emailing a copy thereof addressed to the appropriate party as follows:

If to ONSWC-Chatham North:

Michael Myers	John McDonald	Karen Kemerait
Old North State Water Company	IntegraWater	Fox Rothschild, LLP
4700 Homewood Ct., Suite 108	3212 6 <sup>th</sup> Avenue South, Suite 200	434 Fayetteville St., Suite 2800
Raleigh, NC 27609	Birmingham, AL 35222	Raleigh, NC 27601
mmyers@envirolinkinc.com	<a href="mailto:JMcDonald@integrawater.com">JMcDonald@integrawater.com</a>	Kkemerait@foxrothschild.com

If to FCI:

Fitch Creations, Inc.  
2000 Fearrington Village  
Pittsboro, NC 27312  
Attn: Roy B. Fitch and Greg Fitch  
[greg@fearrington.com](mailto:greg@fearrington.com)  
[RB@fearrington.com](mailto:RB@fearrington.com)

In the interest of administration of this Amended Lease, each Party agrees to provide the other Party, within a commercially reasonable period of time, current contact information, should the contact information provided herein change from time to time.

15. Governing Law. This Amended Lease shall be governed by the laws of the State of North Carolina.

16. Counterparts. This Amended Lease may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

17. Modifications in Writing. This Amended Lease shall not be modified, amended, or changed in any respect except in writing, duly signed by each Party, and each Party hereby waives any right to amend the Amended Lease in any other way.

18. Severability. Should any court of law or administrative or governmental entity with jurisdiction declare any provision or provisions of this Amended Lease to be void or unenforceable, the remaining provisions of the Amended Lease shall remain in full force and effect.

19. Binding Effect. This Amended Lease runs with the Real Property and is binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and seals the day and year above first written

**ONSWC-Chatham North, LLC,**  
a North Carolina limited liability company

By: \_\_\_\_\_  
Michael Myers, its Manager

Date: \_\_\_\_\_

**Fitch Creations, Inc. d/b/a Fearrington Utilities,**  
a North Carolina corporation

By: \_\_\_\_\_  
Roy B. Fitch, its President

Date: \_\_\_\_\_

## Exhibit 1

4833-1493-7921, v. 3-1493-7921, v. 2