



434 Fayetteville Street
Suite 2800
Raleigh, NC 27601
Tel (919) 755-8700 Fax (919) 755-8800
www.foxrothschild.com

KAREN M. KEMERAIT
Direct No: 919.755.8764
Email: kkemerait@foxrothschild.com

March 17, 2021

Ms. Kimberley A. Campbell, Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

RE: NCUC Docket Nos. W-1305, Sub 29; W-1300, Sub 69

Dear Ms. Campbell:

On behalf of Old North State Water Company, LLC, we submit the attached Motion to Allow Bulk Wastewater Treatment Service by Pluris Hampstead, LLC in the above-referenced dockets.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Karen M. Kemerait'.

Karen M. Kemerait

KK:bs

cc: All parties of record
Enclosures

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada
New Jersey New York North Carolina Pennsylvania South Carolina Texas Virginia Washington

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1305, SUB 29
DOCKET NO. W-1300, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joint Application by Pluris Hampstead,
LLC for Authority to Acquire the Sewer
Utility Systems Serving Majestic Oaks
and Hampstead Shopping Center,
Southside Commons (formerly Grey
Bull), Majestic Oaks West, and Salter's
Haven at Lea Marina in Pender County,
North Carolina from Old North State
Water Company, LLC, and Approval of
Rates

**MOTION TO ALLOW BULK
WASTEWATER TREATMENT
SERVICE BY PLURIS HAMPSTEAD,
LLC**

NOW COMES Old North State Water Company, LLC ("ONSWC"), by and through counsel, and respectfully submits this Motion to Allow Bulk Wastewater Treatment Service by Pluris Hampstead, LLC ("Pluris Hampstead") in the above-captioned dockets. In support of this motion, ONSWC submits the following:

1. On October 9, 2020, in the above-captioned dockets, Pluris Hampstead filed a joint application with ONSWC ("Joint Application"), seeking authority to acquire the wastewater systems serving Majestic Oaks and Hampstead Shopping Center, Southside Commons (formerly Grey Bull), Majestic Oaks West, and Salter's Haven at Lea Marina in Pender County, North Carolina (collectively, the "Service Area"). Southside Commons, Majestic Oaks West, and Salter's Haven at Lea Marina have matters pending before the North Carolina Utilities Commission ("Commission") in

Docket No. 1300, Sub 20, Application for a Public Convenience and Necessity, and Docket No. W-1300, Sub 30 and Sub 56, Notification of Contiguous Extensions, respectively.

2. On January 8, 2021, Pluris Hampstead amended its Joint Application to request ONSWC's current rates approved by the Commission in Docket Nos. W-1300, Sub 11 and M-100, Sub 138, and provided additional documentation in support of its Joint Application.

3. On January 27, 2021, Pluris Hampstead filed the Asset Purchase Agreement ("APA") entered into between Pluris Hampstead and ONSWC on September 11, 2020. The APA provides that Pluris Hampstead will purchase from ONSWC the wastewater utility assets serving or to serve the properties in the Service Area. The APA further provides that ONSWC will retain ownership of the wastewater treatment plant located in the Majestic Oaks development ("ONSWC Plant"), and will provide transitional wastewater treatment services to Pluris Hampstead for at least 150 days after the closing of the APA while Pluris Hampstead constructs a lift station and facilities necessary to connect the collection systems in the Service Area to Pluris Hampstead's force main ("Interconnection") in order to treat wastewater from the properties in the Service Area at Pluris Hampstead's membrane bio-reactor treatment plant in Hampstead, North Carolina ("Hampstead Plant").

4. Due to regulatory compliance issues with the ONSWC Plant, ONSWC and Pluris Hampstead entered into a First Amendment to Asset Purchase Agreement ("First Amendment to APA") on March, 4, 2021, attached hereto as Exhibit A, for Pluris

Hampstead to provide bulk wastewater treatment service to ONSWC. The First Amendment contains the following terms and conditions:

- a. Pluris will proceed with construction of the lift station and other facilities necessary to establish the Interconnection to the Hampstead Plant prior to the closing of the APA so that Pluris Hampstead can provide bulk wastewater treatment service to ONSWC.
- b. Within ten business days following the later of (i) completion of the lift station, (ii) connection of the lift station to ONSWC's collection systems and facilities serving the properties in the Service Area, or (iii) completion of the Interconnection to allow wastewater to flow to the Hampstead Plant, Pluris Hampstead will receive and treat all wastewater from the properties in the Service Area at the Hampstead Plant and provide bulk wastewater treatment to ONSWC until the earlier of the closing of the APA or the termination of the APA.
- c. As compensation to Pluris Hampstead for providing bulk wastewater treatment service to ONSWC, ONSWC will pay to Pluris Hampstead a bulk service fee in the amount of the Commission-approved service charges to the properties in the Service Area, calculated based on the total number of ONSWC customers at those properties at the rate of \$56.40 for each residential customer served by ONSWC per month, during the period Pluris Hampstead provides the bulk services to ONSWC.
- d. ONSWC shall maintain the collection systems serving the properties in the Service Area in compliance with all applicable regulatory and environmental regulations and requirements.

WHEREFORE, ONSWC respectfully requests that the Commission grant authority to Pluris Hampstead to provide bulk wastewater service to ONSWC pursuant to the terms and conditions of the First Amendment to APA.

Respectfully submitted this 17th day of March, 2021.

FOX ROTHSCHILD LLP

/s/ Karen M. Kemerait

Karen Kemerait

Partner

Fox Rothschild LLP

434 Fayetteville Street

Suite 2800

Raleigh, NC 27601

(919) 755-8764 - direct

(919) 755-8800 - fax

KKemerait@foxrothschild.com

www.foxrothschild.com

Attorney for Old North State Water Company, LLC

COUNTY OF Jefferson

VERIFICATION

STATE OF ALABAMA

I, John McDonald, Manager of Old North State Water Company, LLC, verify that I have read the foregoing Motion to Allow Bulk Wastewater Treatment Service by Pluris Hampstead, LLC, and know the contents thereof to be true and accurate according to my information and belief.

Old North State Water Company, LLC

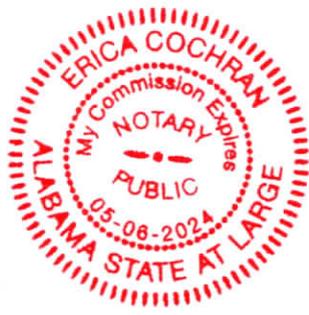
By: John McDonald

[Signature]
John McDonald

SWORN TO AND SUBSCRIBED
Before me this 17th day of March, 2021.

[Signature]
Notary Public

My Commission Expires: 5/6/24



CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing **MOTION TO ALLOW BULK WASTEWATER TREATMENT SERVICE BY PLURIS HAMPSTEAD, LLC** by first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission to all parties of record.

This the 17th day of March, 2021.

/s/ Karen M. Kemerait
FOX ROTHSCHILD LLP
Partner
434 Fayetteville Street
Suite 2800
Raleigh, NC 27601
(919) 755-8764 - direct
(919) 755-8800 - fax
KKemerait@foxrothschild.com
www.foxrothschild.com
Attorney for Old North State Water Company, LLC

Exhibit A

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT ("Amendment") is made and entered into as of the 4th day of March, 2021, by and between OLD NORTH STATE WATER COMPANY, LLC, a North Carolina limited liability company ("ONS" or "Seller"), and PLURIS HAMPSTEAD, LLC, a North Carolina limited liability company ("Pluris" or "Buyer").

WITNESSETH:

WHEREAS, on September 11, 2020, ONS and Pluris entered into an Asset Purchase Agreement (the "APA") for the purchase of utility assets that consist generally of certain wastewater collection facilities and systems (the "Purchased Assets") serving or to serve the Southside Commons (f/k/a Grey Bull), Salters Haven at Lea Marina, Majestic Oaks, and Majestic Oaks West residential developments (collectively "the Service Area"), and utility franchises relating thereto. All capitalized terms used in this Amendment that are not otherwise defined herein shall have the meanings assigned to such terms in the APA.

WHEREAS, ONS and Pluris thereafter filed an application with the NCUC requesting that it approve the transfer of the Purchased Assets and the utility franchises relating to the Properties to Buyer.

WHEREAS, pursuant to the APA and subject to approval by the NCUC, Pluris is to acquire the Purchased Assets as such are more particularly described in the APA, all of which are owned or will be acquired by ONS prior to Closing, and are or will be used to provide sewer service to the Properties in the Service Area. ONS will also convey other assets to Pluris, including easements and fee simple title to the 50' x 50' Lift Station Tract for construction of a lift station (the "Lift Station"), all as more fully described and detailed in the APA.

WHEREAS, the APA provides that ONS will retain ownership of the existing wastewater treatment plant located in the Majestic Oaks development (the "WWTP"), and will provide transitional services to Pluris up through and including the Interim Period for at least 150 days after Closing while Pluris constructs the Lift Station and facilities necessary to connect the collection systems in the Service Area to the Force Main (the "Interconnection") in order to treat wastewater from the Properties at Pluris's membrane bio-reactor treatment plant in Hampstead (the "Hampstead Plant").

WHEREAS, due to potential regulatory compliance issues with the WWTP, ONS desires that Pluris proceed with construction of the Lift Station and establishment of the Interconnection prior to Closing so that Pluris can provide bulk wastewater treatment service to ONS whereby Pluris will receive and treat all wastewater from the Properties at the Hampstead Plant.

WHEREAS, ONS and Pluris wish to amend the APA, to the limited extent specifically provided for in this Amendment, regarding the arrangements for bulk wastewater treatment service to be provided to ONS, until such time as the NCUC approves the transfer of the

Purchased Assets and utility franchises relating to the Properties to Buyer and the Closing occurs, and to address responsibility for the cost of certain facilities to be constructed by Pluris.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions, representations and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated as agreements of the parties hereto.

2. Amendments.

2.1 The APA is amended by adding a new Section 2.07:

SECTION 2.07 PROVISION OF BULK TREATMENT SERVICE BY BUYER.

(A) Subject to the obligations of ONS under Section 2.06 of the APA, Pluris agrees to proceed with construction of the Lift Station and other facilities as necessary to establish the Interconnection, on the following terms and conditions:

1. Pluris, on behalf of and in the name of ONS, will proceed promptly with efforts to secure all Governmental Authorizations necessary for construction of the Lift Station and the Interconnection. ONS will provide Pluris with all easements necessary for construction and operation of the Lift Station, which easements shall be satisfactory to Pluris' counsel.
2. Upon securing all necessary Governmental Authorizations, Pluris will construct the Lift Station on the Lift Station Tract, even though title to that tract will not be conveyed to Pluris unless and until the parties reach Closing.
3. Within ten (10) business days following the later of (i) completion of construction of the Lift Station, (ii) connection of the Lift Station to ONS's collection systems and facilities serving the Properties (collectively "Collection Systems"), and (iii) completion of the Interconnection, Pluris will receive and treat all wastewater from the Properties and provide bulk wastewater treatment service to ONS (the "Commencement Date").
4. Pluris shall provide such bulk wastewater treatment service to ONS from the Commencement Date until the earlier of the date of Closing or the Termination Date, as that term is defined below.
5. As compensation to Pluris for providing bulk wastewater treatment service as provided for in this Amendment, subject to NCUC approval ONS shall pay Pluris a Bulk Service Fee in an amount equal to ONS's NCUC-approved service charges to its customers at the Properties, calculated based on the total number of ONS customers at the Properties at the rate of \$56.40 for each and every residential customer per month, from and including the Commencement Date, up to the earlier of the date of Closing or the Termination Date, as that term is defined below. The day of the Commencement Date within the

month shall serve as the subsequent billing date the single monthly payment is due. Pluris will bill in advance, meaning the first payment is due on the Commencement Date and every month thereafter on that date until the date of Closing or the Termination Date.

The Bulk Service Fee shall change each month as ONS adds additional customers to its system. ONS shall notify Pluris as of the date of each monthly billing as to the total number of customers it is serving.

6. Pluris shall have no dealings with or obligation to deal with ONS's customers at the Properties regarding any customer service issue at any time during the period when Pluris is providing bulk treatment service to ONS.
7. ONS shall maintain the Collection Systems in compliance with all applicable regulatory and environmental regulations and requirements. Pluris shall have no obligation or responsibility for improving, maintaining, or operating the Collection Systems, and shall have no obligation to maintain or achieve compliance with any applicable governmental and/or regulatory regulations or requirements relating to the Collection Systems, or the requirements of any Governmental Body relating thereto. Pluris shall not be responsible for the wastewater from the Properties until it is delivered to the Lift Station by ONS.
8. If the NCUC approves the arrangements for Pluris' provision of the bulk wastewater treatment service and the Bulk Service Fee as provided for in this Section 2.07, then ONS will not be required to provide the Transitional Service Arrangement or the Services described in Section 2.06.

(B) In the event the NCUC does not approve the transfer of the Purchased Assets and the utility franchises relating to the Properties to Pluris, then:

1. (a) This Agreement shall terminate on the date sixty (60) days after the date of such a ruling by the NCUC (the "Termination Date"); and
(b) On or before the Termination Date, ONS shall fully reimburse Pluris for all documented costs incurred by Pluris for planning, permitting and constructing the Lift Station and Interconnection;

and

2. ONS shall choose one of the following options for provision of service to the Properties by ONS on a going forward basis:
 - (a) On or before the Termination Date, ONS will resume operation of its WWTP, will cease sending wastewater to the Lift Station for treatment by Pluris, and shall disconnect the Collection Systems from the Lift Station; or
 - (b) On or before the Termination Date, ONS shall elect to continue receiving bulk treatment service from Pluris on terms and conditions to be agreed upon by the parties and approved by the NCUC.

(C)

- 1. ONS's use of the bulk treatment service shall be at its sole risk, and Pluris shall have no responsibility whatsoever for, and ONS does hereby expressly waive, release, and agree to hold Pluris harmless from any loss, injury, or damage to person or to property suffered by ONS or its customers, agents, employees, invitees, or guests in, on, or about the Properties, except to the extent caused by the gross negligence or willful misconduct of Pluris.

Pluris shall hold ONS harmless from any liability or damages which may arise from Pluris' negligent operations pursuant to this Amendment.

ONS shall hold Pluris harmless from any liability or damages which may arise from all causes of any kind other than Pluris' negligence.

Pluris' liability to ONS under this Amendment excludes all indirect, consequential or punitive damages or claims for such.

- 2. ONS shall pay all franchise, property or other normal taxes associated with its operations at the Properties, and all regulatory fees due the NCUC until the date of Closing.
- 3. Except as specifically amended herein, the terms of the APA remain in full force and effect.

IN WITNESS WHEREOF, the Seller and Buyer have caused this Amendment to be duly executed and entered into on the date first above written.

SELLER:

Old North State Water Company, LLC

By: [Signature]

Title: Managing Member

BUYER:

Pluris Hampstead, LLC

By: [Signature]

Title: MANAGING MEMBER