ROCKINGHAM COUNTY

AMENDMENT NO. 1 TO
INTERLOCAL WATER AGREEMENT

NORTH CAROLINA

THIS AMENDMENT NO. 1 TO THE INTERLOCAL WATER AGREEMENT (the "Amendment No. 1") is made and entered into this the _____ day of October, 2018, by and between the **TOWN OF MAYODAN,** a Municipal Corporation chartered by the State of North Carolina, (hereinafter referred to as "**MAYODAN")** and the **TOWN OF STONEVILLE,** a Municipal Corporation chartered by the State of North Carolina, (hereinafter referred to as **"STONEVILLE")** to amend the original Interlocal Water Agreement executed by the parties on December 2, 2008 (the "Original Agreement," which is attached hereto as Exhibit A).

W I T N E S S E T H:

WHEREAS, Article XII, Section B of the Original Agreement provides that the rates charged for treated water supplied pursuant thereto shall be adjusted each calendar year based upon an audit of expenses for operation of MAYODAN's water system for the previous fiscal year; and

WHEREAS, MAYODAN and STONEVILLE each believe it to be in their best interest to amend the Original Agreement in order to fix the rate at which STONEVILLE shall pay MAYODAN for all treated water furnished by MAYODAN to STONEVILLE for the period from 2019-2021;

WHEREAS, Article XV of the Original Agreement provides that the Original Agreement may be amended by a written agreement authorized by the governing bodies

of each of the parties and signed by their respective authorized representatives; and

WHEREAS, the parties have agreed to enter into this Amendment No. 1 to formalize their respective duties and obligations in such regard.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, MAYODAN and STONEVILLE agree as follows:

1. Article XII of the Original Agreement is hereby amended by adding the following at the end of Section B:

> "C. Three-Year Rate Freeze. Effective as of January 1, 2019, STONEVILLE shall pay MAYODAN (1) at a rate of $2.28 per 1000 gallons of water for all treated water furnished and (2) at a rate of $1.66 per 1000 gallons of sewer (such fixed rates, the "Rate Freeze"). The Rate Freeze shall continue to be in effect for a period of three (3) consecutive years from its effective date, ending at 11:59 PM on December 31, 2021 (such period, the "Rate Freeze Term"). The rates included in the Rate Freeze are based on the 2018 established rates of $2.28 per 1000 gallons of treated water furnished and $1.66 per 1000 gallons of sewer. In lieu of modifying the rates included in the Rate Freeze pursuant to Article XII, Section B, MAYODAN and STONEVILLE agree to the following:
>
> (1) On the first day of each year during the Rate Freeze Term, MAYODAN shall provide STONEVILLE with a statement setting forth (1) the rates that would, absent the Rate Freeze, serve as the adjusted rates for treated water and sewer (the "Adjusted Rates"), calculated based on the audit of operating expenses incurred by the MAYODAN water system in the previous year, pursuant to the terms of Article XII, Section B, together with such schedules and data with respect to the determination of the Adjusted Rates as may be reasonably appropriate to support such calculation and (2) the Adjustment Amount for the previous year, if any ((1) and (2), the "Initial Calculation").
>
> (2) Within 30 days after receipt by STONEVILLE of the Initial Calculation, STONEVILLE may deliver to MAYODAN a written notice (the "Calculation Notice") either (i) advising MAYODAN that STONEVILLE agrees with and accepts the Initial Calculation or (ii) setting forth an explanation in reasonable detail of those items in the Initial Calculation that STONEVILLE disputes and of what STONEVILLE believes is

the correct calculation of the Adjusted Rates (a "Disputed Calculation"). If STONEVILLE does not submit a Calculation Notice within the 30-day period provided herein, then the Initial Calculation shall become final and shall not be subject to further review, challenge or adjustment. If MAYODAN shall concur with the Calculation Notice, or if MAYODAN shall not object to the Calculation Notice in a writing received by STONEVILLE within 30 days after MAYODAN's receipt of the Calculation Notice, the Initial Calculation shall become final and shall not be subject to further review challenge or adjustment. If the parties are unable to resolve any disputes regarding the Initial Calculation, then the parties may, by mutual agreement, hire and evenly share the cost of a recognized firm of independent financial experts whose determination as to the Initial Calculation shall be final and binding and not subject to further review.

(3) If the Adjustment Amount for any year during the Rate Freeze Term is positive, then STONEVILLE shall pay MAYODAN an amount equal to the Adjustment Amount. Any sums due to MAYODAN pursuant to this subsection by the other party shall be payable on or by July 1, 2022.

(4) If the Adjustment Amount for any year during the Rate Freeze Term is negative, then MAYODAN shall pay STONEVILLE an amount equal to the Adjustment Amount. Any sums due to STONEVILLE pursuant to this subsection by the other party shall be payable on or by July 1, 2022.

(5) No later than January 31, 2022, MAYODAN will provide STONEVILLE with a statement setting forth the sum of the Adjustment Amounts for the three years during the Rate Freeze Term (such statement, the "Adjustment Statement"). Any sums due to STONEVILLE or MAYODAN by the other party shall be payable on or by July 1, 2022.

(6) For the purposes of this Article XII, "Adjustment Amount" means the sum of (x) the product of the Adjusted Rate for water for any year during the Rate Freeze Term (a "Rate Freeze Year") and the total gallons of water (in thousands) furnished by MAYODAN during such year and (y) the product of the Adjusted Rate for sewer for such Rate Freeze Year and the total gallons of sewer (in thousands) furnished by MAYODAN <u>minus</u> (z) the amount payable by STONEVILLE to MAYODAN for water and sewer during such Rate Freeze Year under the Rate Freeze (the "Fixed Rate Amount").

D. <u>Termination of the Three-Year Rate Freeze.</u> STONEVILLE has the option to terminate the Rate Freeze at any point before January 1, 2022. Upon termination, MAYODAN shall provide STONEVILLE with a final accounting and an invoice of all amounts owed and/or to be paid as of the date of termination. The financial accounting and invoice shall be provided to STONEVILLE no later than one month after the date of termination. STONEVILLE and/or MAYODAN shall then have one month from the receipt of the final accounting and invoice to make any payments due."

2. Article XXII of the Original Agreement is hereby amended by adding the following at the end of Section B:

> "C. Preaudit & Purchasing Policy. Per NCGS § 159-28, no contract with a local government requiring the payment of any public funds is valid unless properly preaudited in the manner required by said statute. Failure to obtain a preaudit upon the contract makes it invalid and unenforceable per state law. In accordance with the foregoing, the designated officer from STONEVILLE hereby makes the following certification regarding the Original Agreement and this Amendment No. 1:
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> > This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.
> >
> > By:_____
> >
> > Title:_____."

3. Except as specified herein, all terms and conditions of the Original Agreement shall remain unchanged and in full force and effect. Any reference to the Original Agreement shall mean the Original Agreement as amended hereby.

4. This Amendment No. 1 shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to the conflict of laws provisions thereof.

5. This Amendment No. 1 may be executed (including by facsimile or email of a .pdf attachment) in any number of counterparts, each of which shall be deemed an original, but all of which together will constitute but one and the same instrument. The parties hereto may deliver this Amendment No. 1 by facsimile or email of a .pdf attachment, and each party shall be permitted to rely upon the signatures so transmitted to the same extent and effect as if they were original signatures.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Original Agreement as of the date first above written.

TOWN OF MAYODAN, A Municipal Corporation

By: _____(SEAL)

ATTEST:

_____
Town Clerk

TOWN OF STONEVILLE, A Municipal Corporation

By:_____(SEAL)

ATTEST:

_____
Town Clerk

EXHIBIT A

[Interlocal Water Agreement dated December 2, 2008 attached]