

STATE OF NORTE CAROLINA  
COUNTY OF BUNCOMBE

1996  
RESTATED AND AMENDED SUPPLEMENTAL  
WATER AGREEMENT

THIS AGREEMENT is entered into this 13th day of August, 1996, by and among the County of Buncombe (hereinafter referred to as "County"), Beaverdam Water and Sewer District, Busbee Sanitary Sewer District, Caney Valley Sanitary Sewer District, Crescent Hill Sanitary Sewer District, Skyland Sanitary Sewer District, Swannanoa Water and Sewer District, Fairview Sanitary Sewer District, East Biltmore Sanitary Sewer District, Hazel Ward Water and Watershed District, Venable Sanitary Sewer District, and South Buncombe Water and Watershed District (hereinafter referred to as "Districts"), and the City of Asheville (hereinafter referred to as "City");

W I T N E S S E T H :

WHEREAS, the County, the Districts, and the City have previously determined that it is in the best interest of all the citizens of the County, the Districts, and the City for water facilities to be consolidated and operated pursuant to policies established by an Asheville/Buncombe Water Authority (hereinafter referred to as "Authority"), as hereinafter provided;

WHEREAS, in order to establish the Authority, the parties hereto initially entered into a Water Agreement on the 29th day of October, 1981 (hereinafter referred to as "1981 Water Agreement"); and

WHEREAS, the parties hereto subsequently entered into a Supplemental Water Agreement on the 18th day of August, 1987, which superseded the 1981 Water Agreement; and

WHEREAS, the parties hereto entered into an Agreement on October 20, 1987, which amended the Supplemental Water Agreement to allow employees of the City or County to be appointed to the Authority only if they are elected officials, which provision was subsequently deleted by the Third Amendment described hereinafter; and

WHEREAS, the parties hereto entered into an Amendment to the Supplemental Water Agreement dated November 13, 1990, to address the term which members of the Authority may serve; and

WHEREAS, on June 25, 1991, the City and County entered into an Agreement to resolve their differences regarding the calculation of the formula for reimbursement to the City and other municipalities within the County under the law enforcement formula set forth in Article XIII of the Supplemental Water Agreement; and

WHEREAS, the parties hereto entered into a Third Amendment to the Supplemental Water Agreement dated November 11, 1991, and a Fourth Amendment to the Supplemental Water Agreement dated December 20, 1994, both of which Amendments relate to membership on the Authority; and

WHEREAS, the parties hereto have determined to further amend and restate the Supplemental Water Agreement in order that revenue bonds may be issued by the City for the water system pursuant to the General Trust Indenture dated September 15, 1996 (hereinafter "Indenture"), a copy of which shall be attached hereto as Exhibit "A" after the Indenture has been fully executed;

NOW, THEREFORE, the County, the Districts, and the City do contract and agree as follows:

ARTICLE I. TERM. The term of this Agreement commenced as of July 1, 1987 and continues until the latest of the following:

- A. Midnight on the 30th day of June, 2024; or
- B. The date on which there are no bonds issued pursuant to the Indenture which are still outstanding; or
- C. The date on which there are no other bonds issued or installment financings entered into for the water system which are still outstanding,

unless this Agreement is terminated by a party or the parties hereto pursuant to Article XV set forth hereinafter.

ARTICLE II. ORGANIZATION. The Authority shall continue to be appointed as a joint agency pursuant to the authority of N. C. Gen. Stat. sec. 160A-462. The Authority shall consist of ten (10) members: three (3) of whom shall be appointed by the Buncombe County Board of Commissioners, two (2) of whom may be members of said Board; three (3) of whom shall be appointed by the Asheville City Council, two (2) of whom may be members of said Council; two (2) of whom shall be appointed by the Henderson County Board of Commissioners, one (1) of whom may be a member of said Board; and two (2) of whom shall be appointed by the other eight (8) members of the Authority. Provided, however, on and after January 1, 1998, the Authority shall consist of nine (9) members, and only one (1) member shall be appointed by the other eight (8) members of the Authority. No employee of the City, Buncombe County, or Henderson County shall be appointed. It is understood and agreed that those persons previously nominated and appointed by the City, Buncombe County and the Authority shall continue to serve for the remainder of their respective terms following the execution of this Agreement. The term of office for a member of the Authority shall continue to be three (3) years. Provided, however, that upon the affirmative vote of the Authority, the City Council of the City of Asheville and the



Buncombe County Board of Commissioners, a member may serve for such additional period of time or such additional terms to which the three (3) governmental bodies may agree.

The Chairman of the Authority shall be selected by the membership of the Authority and shall be selected from the group of individuals not on the City Council, or either of the Boards of Commissioners.

The City Manager or his designee may serve as secretary to the Authority with no voting rights and while serving as secretary shall attend all meetings of the Authority. The Authority may designate another person to serve as secretary without pay if so desired. The County Manager of the County, or his designee, and the City Manager, or his designee, may also attend all meetings of the Authority, including closed sessions, as non-voting members.

ARTICLE III. OWNERSHIP OF WATER SYSTEM. Pursuant to the 1981 Water Agreement, the County and Districts have conveyed to the City by appropriate instrument(s) all County-owned and District water facilities, subject to the conditions of said 1981 Water Agreement, including not only existing water lines but also all real estate interests relating thereto and necessary to the maintenance of said facilities. The County and Districts have conveyed to the City such title as they may have had for these facilities and real estate. The City shall continue to have full authority over the land associated with the water facilities and shall have all rights to the proceeds from timber sales and other land uses as approved by the appropriate state agencies.

ARTICLE IV. RESPONSIBILITIES OF THE AUTHORITY.

- A. Extensions in Areas of Services. The Authority shall be responsible for determining water extension policies and defining the share of costs of the extension(s) to be paid out of the consolidated water system and to future extensions or additions thereto, subject to the availability of adequate water, in accordance with policies adopted by the Authority.

Notwithstanding the Authority's prerogative to determine and adopt policies for extensions in areas of service, the Authority shall meet the need to expand the water system to enable the City to fulfill its annexation obligations for water services and to that end shall appropriate from water revenues the funds needed, less any grant funds, for the City of Asheville to meet annexation obligations for water services for the full term of the Agreement.

The Authority shall review extension policies at least once each year. The City, the County, or the Districts may request consideration by the Authority on any

matter relating to water operations and may propose changes in extension policies.

- B. Consultants. The Authority may hire consultants who shall be paid out of the approved water budget.
- C. Water Rates. The Authority shall have the responsibility to fix and revise, from time to time, rents, rates, fees, assessments, and other charges for the use of the services and facilities furnished by the water system to be paid by customers for water services in order to generate sufficient revenue to meet costs of operating and maintaining the system, all debt service costs, all operating capital, a reasonable reserve for improvements and enlargements, all other costs or expenses necessary and desirable for carrying out the governmental authority and responsibility relating to the provision of water services and all other commitments to be funded by revenues of the water system under this Agreement, including commitments to the City and the County under Section P of Article IV. All revenue from water services shall be credited to the appropriate accounts of the Water Funds, hereinafter mentioned, as herein provided for the uses herein specified and subject to the provisions of the Indenture.

The Authority shall review the water rates structure at least once each year. The City, the County, or the Districts may request consideration by the Authority on any matter relating to the water rates structure.

Nothing herein shall be construed to give the Authority the right to violate the rate limitation provisions of the Sullivan Act.

- D. Reports to the City, County, and Districts. Semi-annual reports shall be made to the City, the County, and the Districts by the Authority or as requested by the City, the County, or the Districts.
- E. By-Laws. By-laws of the Authority for the regulation of its affairs and the conduct of its business, including compensation for its members have previously been approved by the City, the County, and the Districts. The by-laws may be amended hereafter by the Authority acting as a body with one vote, the Buncombe County Board of Commissioners acting as a body with one vote, and the City Council acting as a body with one vote, each meeting in formal session and upon the affirmative vote of two of the three bodies.
- F. Suit. The Authority may sue and be sued in its own name, plead, and be impleaded.



- G. Additional Water Systems. The Authority has the right in the name of the City to acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain, and operate any water system or part thereof within the Authority's area of responsibility.

The Authority shall have the authority to negotiate and pay close-out costs involved in the acquisition or lease of existing water supply and water system.

The Authority shall have the authority to lease from any city, except the City of Asheville, or town or any other municipal corporation, or from any water or sewage district or from any county or other political subdivision any water or water system or portions thereof upon such terms and conditions and for such consideration as the Authority deems fair and reasonable.

- H. Land Acquisition and Personal Property Acquisition. The Authority shall have the authority to acquire in the name of the City of Asheville, either within or without the corporate limits of the City, by gift, purchase, or lease any improved or unimproved lands or rights in lands, and to acquire by lease or purchase such personal property as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipping, maintenance, or operation of any water or water system, including rights-of-way, easements, or title in fee simple.

- I. Contracts and Agreements. Except for documents related to loans or other indebtedness, which shall require approval of the City and the County, the Authority may make and enter into contracts, leases, and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Agreement and to contract with other political subdivisions for construction of facilities to be jointly financed.

- J. Hiring a New Director. A Director of the City's Water Resources Department selected after the term of the Director at the time this Agreement is entered into shall be selected in the following manner: An Assessment Committee shall be named - two to be appointed by the Authority, two to be named by the City Manager. Those named by the City Manager shall be professionals in the field of water and sewerage services. The Assessment Committee shall receive the applications and interview the candidates. The

Assessment Committee shall recommend five top candidates to the City Manager. The City Manager shall make the final selection from among the five candidates submitted by the Committee.

- K. Dismissal of the Director. Any Director of the City's Water Resources Department may be dismissed or disciplined by the City Manager for cause.
- L. Acceptance of Grants. After receiving approval from the City and the County, the Authority shall have the right to receive and accept in the name of the Authority, the County, or the City from the United States of America or the State of North Carolina, or any agency or instrumentality thereof, loans, grants, advances, or contributions for the construction, improvement, extension, enlargement, repair, equipping, maintenance, or operation of any water system(s) to agree to such reasonable conditions or requirements as may be imposed, and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants, advances, or contributions may be made.
- M. Applications Collections/Cutoff. The Authority is authorized and empowered, through its board, officers, and agents to cause any user of water who shall fail to pay promptly his water rent or use bill of any month to be cut off and his right to further use of water from said system to be discontinued until payment of any water rent or use arrearages.
- N. Employment of Legal Counsel. The Authority shall be authorized to hire legal counsel.
- O. Services to the City and County. Water service at all City and County facilities shall be metered, and direct activities operated as general governmental services, except schools, by the City and County shall receive reasonable maintenance, replacement, improvement of water facilities, and reasonable amounts of water free of charge. By way of example and not by way of limitation, this shall include water fountains, City Building, Courthouse, County libraries, street flushers, Nature Center, etc.
- P. Payments to the City of Asheville and Buncombe County. The City and the County shall be paid a percentage of Revenues of the water system from the Surplus Account, as Revenues and Surplus Account are defined in the Indenture, as follows:



- (a) The City shall receive five percent (5%) of the Revenues annually.
- (b) The County shall receive two and one-half percent (2.5%) of the Revenues annually, which shall be used by the County for economic development purposes.

These payments shall be made according to the priority of Funds as defined and set forth in the Indenture. If moneys in the Surplus Account are insufficient to make the payments to the City and the County as described above, then the City and the County shall be paid pro rata. At the end of the term or upon other termination of the Indenture, the City and the County shall continue to receive these payments from the gross water revenues annually as they had been receiving them prior to the execution of the Indenture.

- Q. Debt. Debt service payments shall be made on past water bond issues and on the Series 1996 water system revenue bonds from water revenues. If the Authority deems it necessary in the future to acquire, construct, reconstruct, extend, or improve water facilities, and if sufficient funds are not available, such acquisition, construction, reconstruction, extension, or improvement may be financed from monies received from bonds or installment financings after request is made by the Authority, the City or the County and approval is given by both of the two other parties. Debt service on said bonds or installment financings shall be paid from water revenues.
- R. Master Plan. The Authority shall be responsible for developing a Master Plan which shall be followed for capital improvements. Said Master Plan or amendments to said Plan shall be approved by the Authority acting as a body with one vote, the Board of Commissioners of Buncombe County acting as a body with one vote and the City Council acting as a body with one vote, each meeting in formal session and upon the affirmative vote of two of the three bodies.
- S. Policies. All policies of the City shall remain in full force and effect and be applicable to the consolidated water system except where modified by the Authority as provided herein or where otherwise inconsistent with this Agreement.

ARTICLE V. FINANCE. All financial activities of the Authority shall be accounted for in the Water Funds maintained by the City in such manner as may be required by applicable North Carolina law, the North Carolina Local Government Commission, and the City's customary financial procedures, subject to the

provisions of the Indenture. No water receipts shall be transferred from the Water Funds to support City functions that are not appropriate water operations, except as provided herein. Transfers from the Water Funds to other funds or accounts may be made to reimburse those funds or accounts for actual expenses incurred in support of water operations made pursuant to the provisions of Article VII, sec. B., of this Agreement. The monies in the Water Funds will be used for water purposes, except as provided herein, in the manner or manners determined by the Authority in the course of its annual budget process, subject to the requirements set forth herein.

The annual budget for the Authority shall be prepared in accordance with the North Carolina Local Government Budget and Fiscal Control Act, City budgetary policies and as required to meet the obligations set forth in the Indenture. The Director of the Water Resources Department and the City Budget Officer shall present said budget to the Authority on or before May 15 of each year for consideration. Upon review and approval by the Authority, said budget shall be submitted to the Board of Commissioners of Buncombe County and the City Council on or before June 1 of each year for review, consideration, and approval, each acting in formal session. The adopted budget or any part thereof may be amended upon recommendation of the Authority and upon review, consideration, and approval of both the City Council and the Board of Commissioners of Buncombe County, each acting in formal session. In the event the Authority, the City or the County does not approve an annual budget for the Authority for any fiscal year, the annual budget of the Authority for the preceding fiscal year will be deemed to have been adopted and approved and be in effect for such fiscal year until the annual budget of the Authority for such fiscal year has been adopted and approved by all three parties; provided, however, the water rates for such fiscal year, when using the budget from the preceding fiscal year, shall be adjusted by the City or the Authority to a rate sufficient to meet the rate covenants, as required by the Indenture.

It is contemplated by the parties hereto that revenues for water services will be sufficient to defray all costs of operation and maintenance of water facilities and all costs of provision of water services. Therefore, it is understood that neither the City nor the County shall contribute any monies for the Authority except as may be otherwise provided herein.

During the course of this Agreement, the City and County may also request money from appropriate accounts of the Water Funds as a local match for obtaining grants for water purposes. However, moneys from the Water Funds may not be used for 201 and 208 Capital Projects unless approved by the City and County.

The Authority shall budget expenses in accordance with City personnel and administrative policies.



ARTICLE VI. EXTENSIONS BY THE CITY, BY THE COUNTY, OR BOTH.  
Subject to the availability of adequate water and the approval of the Authority, the County or the City, or both may install at their own expense water or sewer lines. It is understood that water extensions will only be funded from the appropriate accounts of the Water Funds to the extent that they are in conformance with the policies adopted by the Authority. The normal extension policy will be for the ownership of any lines constructed in this manner to be conveyed to the City subject to the conditions herein contained.

ARTICLE VII. RESPONSIBILITIES OF THE CITY.

- A. Water Resources Department Employees Responsible to the City Manager. All Water Resources Department employees shall be City employees and shall be administratively responsible to the City Manager and subject to City personnel policies the same as all other City employees. The Director of the Water Resources Department shall be a City employee and shall be administratively responsible to the City Manager for carrying out the policies of the Authority, the County, and the City. The jurisdiction, authority, rights, privileges, and immunities (including coverage under workers' compensation laws) which the officers, agents, and employees of the Water Resources Department of the City enjoy within the territory of the City shall also be enjoyed by them outside such territory when they are acting pursuant to this Agreement and within the scope of their authority or the course of their employment.
- B. Support Services. The City shall provide the water system with needed support services, such as accounting, data processing, purchasing, and administrative services. The Authority shall reimburse the City for these expenses from the appropriate accounts of the Water Funds on a cost-of-services basis as determined by and mutually acceptable to the City and the Authority.
- C. Debt Service Payments. The City shall pay, in accordance with Article XI hereof, from the appropriate accounts of the Water Funds, the amounts needed to meet the debt service and other funding obligations required by the Indenture, by all other bond documents for bonds issued previously for or on behalf of the water system, and by other applicable bond and installment financing documents entered into for or on behalf of the water system, as the debt service becomes due and payable.
- D. Facilities. The Authority shall contract with the City for the City to furnish offices and other facilities as may be needed for administrative and Authority purposes. The City shall be paid fair market rental

rates for such offices and facilities with said rental rates to be determined jointly by the Authority and the City.

ARTICLE VIII. SULLIVAN ACT AND WATER LINE MAINTENANCE.

Neither the City nor the Authority nor the County, shall institute or cause to be instituted any lawsuit to contest the validity of the Sullivan Act during the term of this Agreement. In the event the Act is declared by a court of competent jurisdiction to be unconstitutional or invalid for any reason, the Authority shall, nevertheless, provide water to each class of customer at equal rates. Water line maintenance within the jurisdiction of the Authority shall be paid for out of water revenues. Nothing herein shall be construed so as to give the Authority the right to violate the rate limitation provisions of the Sullivan Act.

ARTICLE IX. BEE TREE LAKE. Due to its use as a permanent or emergency water source, the Bee Tree Lake facility shall be under the direct control of the Authority. The Authority shall determine the types of recreation activities to be allowed at the Bee Tree facility. In the event that recreational activities are permitted at said facility, such activities shall be under the auspices of the Buncombe County Parks and Recreation Department and shall be paid for by the County. Funds needed for the items associated with the repair and renovation of the Bee Tree facility to meet the federal and state requirements for dam safety are to be appropriated from the Water Fund.

ARTICLE X. AUDITOR REVIEW. The City and County, as part of their annual, independent audit, may direct their respective auditors to review the provisions of this Agreement and determine whether said provisions have been met by the respective parties. A report of the auditors' findings shall be mailed to the City, the County, and the Authority for review.

ARTICLE XI. PRE-EMINENCE OF BOND COVENANTS. The City shall retain title to all of the assets of the entire water system of the City under the provisions of and during the term of this Agreement, such system being herein sometimes referred to as the "water system" or "water system of the City."

All revenues arising from the operation and ownership of the water system of the City shall be deposited as received to the credit of the Water Funds of the City (hereinbefore and hereinafter referred to as "Water Funds"), according to the requirements of the Indenture.

All monies held for the credit of the Water Funds shall be applied as required by the obligations set forth in this Agreement and in the Indenture. After all of the obligations set forth in the Indenture, including, but not limited to, obligations for the bonds issued by the City pursuant to the Indenture and any General Obligation Indebtedness, as defined in



the Indenture, have been satisfied in full, water revenues shall continue to be used for the water system as described in Section C. of Article IV of this Agreement.

The Authority shall comply with the terms and provisions of the Indenture, as well as with statutory requirements relating to bonds issued by the City pursuant to the Indenture and any General Obligation Indebtedness, as defined in the Indenture the issuance of which has been requested by the Authority and approved by the County. In the event the Authority does not so comply, and continues to fail to comply for a period of thirty (30) days after written notice from the City, which notice specifies such failure and requests that it be remedied, the City shall have the right to rescind this Agreement and to reassume any and all control over the operations of the water system, subject to the provisions of this Agreement relating to the ownership of assets in the event of termination.

#### ARTICLE XII. RESPONSIBILITIES OF THE COUNTY.

A. Law Enforcement. Effective FY 1988-89, the County shall prepare the County Sheriff's Department budget so as to separate the direct cost of providing the patrol and investigative functions (hereinafter referred to as "P/I Costs") from the remainder of the Sheriff's Department budget, for the purpose of identifying those functions which are provided only in the unincorporated areas of Buncombe County. The cost of any service added to the Sheriff's Department budget in the future which applies only to the unincorporated areas of the County shall be added to the "P/I Costs" in subsection (1) below. The County shall pay an annual payment to each municipality in the County in accordance with the following steps using the current population estimates for North Carolina Municipalities and Counties for the cities, towns, and the County as provided by the North Carolina Office of the State Budget and Management in the computations:

- (1) Separate the direct cost of providing the patrol and investigative functions;
- (2) Add the total estimated population in each incorporated municipality and the total estimated population in the unincorporated areas to determine the "Total Estimated Population;"
- (3) Divide the result of (1) by the percentage of the total estimated population which are in the unincorporated areas to determine the amount of funds which are to be distributed among the County and the municipalities for the patrol and investigative functions;

- (4) Multiply the result of (3) times the percentage of the "Total Estimated Population" in each municipality and in the unincorporated areas to determine the annual payment which is to be made to each.

Pursuant to the Memorandum of Agreement between the City and the County dated June 25, 1991, the method of applying the formula shall be that method used by the County during FY 1987-88 and FY 1988-89 and calculations of the formula by the County shall be provided annually to the City for the City's use in its annual budgetary process.

B. Parks and Recreation. In order to clearly define recreation responsibilities between the City and the County, the County shall carry out the following:

- (1) The County has assumed ownership and financial and management responsibility for the following recreation facilities and programs acknowledging such facilities to be "County-wide facilities" in their nature and service areas:
  - (a) Recreation Park;
  - (b) Municipal Golf Course;
  - (c) McCormick Field;
  - (d) Youth Council; and
  - (e) Aston Park Tennis Facility.

In the event of termination of this Agreement or failure to use the foregoing facilities for recreational purposes, ownership of the facilities and any related equipment and other personal property necessary for the operation and maintenance of the facilities shall revert to the City.

The City and County agree that Lake Julian and the Nature Center are "County-wide facilities" in their nature and service areas.

- (2) The County will compute the direct net costs of operating and maintaining "community recreation facilities" in the six County school districts and will pay to the City on an annual basis a fair share amount to be used to provide community recreation in the City school district. Said amount to be computed as follows using the



previous year's assessed valuation as a basis for computations:

- (a) Compute the annual direct net cost of operating and maintaining "community recreation facilities" operated by the County (hereinafter called "community recreation costs").
- (b) Divide the total assessed valuation for the six County school districts by the total assessed valuation for the County.
- (c) Divide the results of (a) by the results of (b).
- (d) Divide the assessed valuation of the City school district by the assessed valuation of the County.
- (e) Multiply the results of (c) times the results of (d) to determine the annual payment which shall be made by the County to the City.
- (f) For the purposes of this Agreement, the following shall be found to be community recreation facilities:
  - (i) Hominy Park;
  - (ii) Skyland Recreation Center;
  - (iii) Erwin Pool;
  - (iv) Owen Park; and
  - (v) Community Ballfields.

Should new community facilities be constructed by the County, they shall be added to this Agreement accordingly.

- (3) The County will expand existing County recreation programs to provide County-wide coverage and equal service to all County residents.
- (4) The City and County endorse in concept the merging of their respective Recreation Advisory Boards and request that said Boards develop a plan to carry out this intent.

C. Civic Arts. The County shall pay to the City monthly the fair market rent on the current space provided in the Civic Center Complex for the Asheville Symphony.

Additional space will be leased to this and other groups only upon approval of the Board of Commissioners of Buncombe County.

- D. Buncombe County Tax Collection. During the term of this Agreement, the City agrees to pay and the County agrees to accept 1.5% of tax revenue collections in payment for the services provided for tax billing and collection services.
- E. Outside Agencies. This item outlines the mutual agreement reached regarding the scope of benefits and establishes funding responsibility of the City and County as it relates to the below-mentioned activities. It is understood that neither the City nor the County are legally obligated to fund any of the below-mentioned agencies and that each governing body must evaluate each organization and the service provided by that organization each year through the budgetary process. Insofar as possible, it is the intent to each governing body to utilize the following guidelines in determining its responsibility. Said activities in their scope of benefits are as follows:
- (1) WNC Development Corporation. The County agrees that the benefit of this program is primarily to the County, and the City will not participate in funding.
  - (2) Buncombe County Rescue Squad. The City agrees that the benefit of this activity is primarily to the City and the County will not participate in the funding.
  - (3) Quality Forward. The County agrees to fund 100%.
  - (4) Nutrition Program. The County agrees to accept full local funding responsibility for this Program.

ARTICLE XIII. AMENDMENT. This Agreement may be amended at any time by mutual agreement of the City, the County, and the Districts. Such amendment may include provision for allowing other municipalities and districts to become parties to this Agreement.

ARTICLE XIV. SEVERABILITY. In the event any article of this Agreement or any portion thereof shall be found to be illegal, invalid, or unconstitutional, the remaining sections shall not in any way be affected.

ARTICLE XV. TERMINATION.

- A. This Agreement may be terminated as follows:



1. By mutual agreement of the County, the City and the Districts;
  2. By the City upon a failure of the Authority or the County to comply with the Indenture or any statute relating to bonds issued by the City pursuant to the Indenture and any General Obligation Indebtedness, as defined in the Indenture, as provided in Article XI hereof;
  3. By rescission by the City of the Agreement in accordance with the provisions of Article XI;
  4. By the City upon a failure on the part of the County to meet its funding obligations described in this Agreement; or
  5. By either the City Council or Board of Commissioners of Buncombe County giving one (1) year's notice of termination to the other body and to the Authority.
- B. Provided, however, that in the event the parties hereto agree upon the location and construction of a new water source facility and provided further that the City issues bonds to finance the acquisition and/or construction of said new water source facility, then and in that event it is expressly understood and agreed that the County shall not have the right to terminate this Agreement until such time as the bonded indebtedness created to finance the acquisition and/or construction of such new water source facility shall have been paid in full or provision for payment of same shall have been made and mutually agreed upon between the parties hereto and a nationally recognized bond counsel provides an opinion that provision for payment will not adversely affect the federal or state income tax treatment of interest on the bonds. Selection of the bond counsel shall be agreed to by the City and the County and fees of the bond counsel shall be paid from the the Revenue Fund as defined in the Indenture.
- C. In the event of the termination of this Agreement, the ownership of all water system facilities conveyed to the City pursuant to this Agreement shall revert to the County and the Districts as their interests may appear and upon the transfer by the City to the County and the Districts of those water system facilities and payment of all monetary obligations of each party to all other parties undertaken hereunder during the term hereof, this Agreement shall no longer have any force or effect nor shall any party hereto have any continuing obligation to any other party hereunder.

D. In the event special legislation is enacted by the General Assembly preventing the City from annexing, the City reserves the right to declare this Agreement null and void.

Article XVI. TRANSFER OF PART OF WATER SYSTEM. Provided the City agrees to the sale, lease or other disposal, nothing herein shall prohibit or be deemed to prohibit the sale, lease or other disposal of a part of the water system constructed on behalf of or with funds provided by a governmental unit other than the City or the County to that governmental unit, pursuant to Section 6.11(b) of the Indenture.

Article XVII. PRIOR AGREEMENTS. This Agreement shall supersede, restate and amend the original Water Agreement dated October 29, 1981 and the Supplemental Water Agreement dated August 18, 1987.

IN WITNESS WHEREOF, the parties hereto have caused the due execution of this Agreement following the approval thereof by the Board of Commissioners of Buncombe County on behalf of the County and the Districts and by the City Council of the City of Asheville on behalf of the City.

Attest to:

Kathie Hughes  
Clerk to the Board  
(Corporate Seal)

COUNTY OF BUNCOMBE

By:

Gene Rainey  
Gene Rainey, Chairman,  
Board of Commissioners,  
on behalf of the County of  
Buncombe and the Districts

Attest to:

Margaret Boulson  
City Clerk  
(Corporate Seal)

CITY OF ASHEVILLE

By:

Russell M. Martin  
Russell M. Martin, Mayor  
of the City of Asheville, on  
behalf of the City of Asheville