

TOWN OF PITTSBORO
ORDINANCE AMENDING THE
2019-2020 OPERATING BUDGET

Be It Ordained by the Board of Commissioners of the Town of Pittsboro in regular session assembled on the 24th day of February, 2020.

Section 1. That the following **ENTERPRISE FUND REVENUE ITEMS** be increased by the amounts indicated:

30-1000-000	TRANSFER FROM OTHER FUND	\$276,839.07
TOTAL		\$276,839.07

Section 2. That the following **ENTERPRISE FUND EXPENDITURE ITEM** be increased by the amount indicated:

30-7200-500	JORDAN LAKE ALLOCATION	\$276,839.07
TOTAL		\$276,839.07

Section 3. That the following **SDF CAPITAL RESERVE REVENUE** be increased by the amount indicated:

70-3990-000	FUND BALANCE APPROPRIATED	\$276,839.07
TOTAL		\$276,839.07

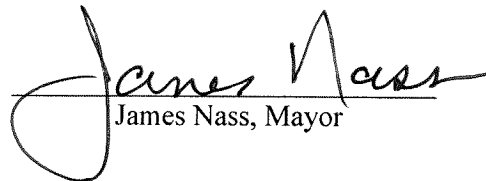
Section 4. That the following **SDF CAPITAL RESERVE EXPENDITURE** be increased by the amount indicated:

70-3000-000	TRANSFER TO OTHER FUND	\$276,839.07
TOTAL		\$276,839.07

Adopted this 24th day of February, 2020.

ATTEST:


Cassandra Bullock, Deputy Town Clerk


James Nass, Mayor

**CONTRACT BETWEEN THE STATE OF NORTH CAROLINA
AND
THE TOWN OF PITTSBORO
FOR
WATER SUPPLY STORAGE IN B. EVERETT JORDAN LAKE**

This contract ("Contract"), entered into by and between the STATE OF NORTH CAROLINA ("State") and the TOWN OF PITTSBORO ("Allocation Holder");

WITNESSETH THAT:

WHEREAS, the Flood Control Act of 1963 (Public Law 88-253, 88th Congress) authorized the construction, operation and maintenance of the B. Everett Jordan Dam and Lake Project on Haw River and New Hope River, North Carolina ("Project"); and

WHEREAS, the State contracted with the United States of America ("Government") for the use of storage included in the Project for municipal and industrial water supply ("Jordan Water Supply Storage"), and for payment of the cost thereof in accordance with the provisions of the Water Supply Act of 1958, as amended; and

WHEREAS, the State through the Environmental Management Commission ("Commission") is authorized by N.C. Gen. Stat. §143-354(11) to assign to any county or municipality or any other local government having a need for water supply storage in federal projects any interest held by the State in such storage, upon assumption of repayment obligation therefore or compensation to the State by such local government; and

WHEREAS, on March 9, 2017, the Commission allocated a total of six (6) percent of the water supply storage held by the State to the Allocation Holder for its use; the allocation consisting of a Level I allocation of three (3) percent and a Level II allocation of three (3) percent; and

WHEREAS, the allocation became effective on the date it was approved (i.e. March 9, 2017) and, by and through its terms and conditions, this Contract implements the allocation.

NOW, THEREFORE, the State and the Allocation Holder (hereinafter jointly referred to as the "Parties") agree as follows:

ARTICLE I – DEFINITIONS.

- (A) Annual Operation and Maintenance (O&M) Expense – The daily Project O&M costs over the Calendar Year.
- (B) Calendar Year – A one-year period beginning January 1 and ending December 31.
- (C) Capital Costs – The amount of principal paid by the State to the Government as part of the construction of the Project, i.e. \$4,317,884.28.
- (D) Division – The Division of Water Resources within the North Carolina Department of Environmental Quality.
- (E) Interest Costs – The amount of interest paid by the State to the Government as part of the construction of the Project, i.e. \$ 2,363,375.66.
- (F) Jordan Water Supply Storage – The portion of the water supply included in the Project for municipal and industrial water supply.
- (G) Level I Allocation – An assignment of Jordan Water Supply Storage that is made to an applicant that has an immediate need for water and plans to commence withdrawals within five years.
- (H) Level II Allocation – An assignment of Jordan Water Supply Storage that is made to an applicant that has a long-range need for water five to thirty years into the future.
- (I) Life of the Project – The physical life of the Project.
- (J) Major Replacement Costs – Infrequent costs to replace major structures, facilities and associated equipment at the Project.
- (K) Major Rehabilitation Costs – Infrequent significant costs to rehabilitate structures, facilities and equipment at the Project.
- (L) Net Inflow – The change (positive or negative) in the amount of water stored in Jordan Lake, as measured by the difference in elevation from one day to the next (i.e., a 24-hour period), plus the amount of water withdrawn from Jordan Lake during that same one-day period, plus the amount of water released from the dam or spillway during that same one-day period.
- (M) Project – The B. Everett Jordan Dam and Lake Project on Haw River and New Hope River, North Carolina.
- (N) Total Capital and Interest Cost – the total amount paid by the State to the Government as part of the construction of the Jordan Water Supply Storage, i.e. \$6,681,259.94.

ARTICLE II – RELATIONSHIP TO OTHER AGREEMENTS.

This Contract is predicated on the State's right to utilize the Jordan Water Supply Storage as provided in the contract between the State and the Government, dated April 10, 1988, which is attached hereto as Attachment A. Upon execution of this Contract any and all previous contracts between the State and the Allocation Holder regarding water supply in Jordan Lake are merged into this Contract and all outstanding rights and duties under previous contracts are continued and governed by this Contract. If there is a conflict between prior contracts and this Contract, the provisions in this Contract shall prevail.

ARTICLE III – JORDAN WATER SUPPLY STORAGE.

- (A) Total Water Supply Storage Available. As provided in Attachment A, the State has the right to utilize an undivided 32.62 percent of the storage space at the Project between elevation 202 feet above mean sea level and 216 feet above mean sea level. The storage space held by the State is estimated to equal 45,800 acre-feet before adjustment for sediment deposits.
- (B) Jordan Water Supply Storage Amounts. The Division will maintain records on the amount of water supply available in the water supply storage pool and will inform each Allocation Holder of the amount of water available in its portion of that pool.
- (C) Sediment Adjustments. From time to time, the Government will survey the amount of sediment accumulated in Jordan Lake. When necessary, the Government will re-allocate the storage remaining in the lake among the Project purposes, maintaining the same proportional storage space for each purpose. This adjustment of storage may reduce the amount of space available to each Allocation Holder. Note, because a sediment storage pool designed to last over 100 years is included in Jordan Lake, such reductions in water supply storage are not expected to occur until after the year 2082.

ARTICLE IV – RIGHTS OF THE ALLOCATION HOLDER.

- (A) Right to Withdraw Level I Allocation: The Allocation Holder has a three (3) percent Level I Allocation. Subject to the limitations set forth in this Contract and any other requirements provided by law, the Allocation Holder has the right to withdraw up to three (3) percent of the Jordan Water Supply Storage. The Allocation Holder's water withdrawals will be restricted during water shortage conditions according to the Allocation Holder's approved drought and water shortage response plan under Article V, and in accordance with other laws. If the Allocation Holder's storage space becomes depleted, the Allocation Holder's right of withdrawal will be limited to a maximum withdrawal of three (3) percent of the portion of Net Inflow allocated to water supply (three (3) percent of 32.62 percent, which equals 0.9786 percent of the Net Inflow), for as

long as the Allocation Holder's water supply storage space is depleted.

- (B) Level II Allocation: The Allocation Holder has a three (3) percent Level II Allocation. In order to withdraw any portion of the Level II Allocation, the Allocation Holder must seek approval from the Commission to convert the Level II Allocation to a Level I Allocation. Pursuant to 15A NCAC 02G .0504, the Allocation Holder must demonstrate an immediate need and ability to commence withdrawal within five years of the effective date of the conversion.
- (C) The Allocation Holder's right to withdraw is contingent upon compliance with this Contract. The Allocation Holder's allocation may be revised or rescinded as set forth in 15A NCAC 02G .0507.
- (D) The Allocation Holder shall have the right to construct all such works, plants, pipelines and appurtenances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the Government and of the State as to design and location. Notwithstanding such approval, the Allocation Holder shall comply with all applicable laws, including all permitting requirements. The grant of an easement for right-of-way across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, without additional cost to the Allocation Holder under the authority of and in accordance with the provisions of 10 USC 2668 and as may be necessary. Subject to the conditions of such easement, the Allocation Holder shall have the right to use as much of the Project land as may reasonably be required in the exercise of the rights and privileges granted under this Contract.
- (E) During any construction, operation and maintenance by the Allocation Holder of any facilities, the Allocation Holder will take specific actions to control environmental pollution that could result from such activity and to comply with applicable Federal, State, and local laws and regulations concerning environmental pollution.
- (F) The Allocation Holder shall be responsible for operation and maintenance of all installations and facilities that it may construct for the diversion or withdrawal of water, and shall bear all costs of construction, operation and maintenance of such installations and facilities. The responsibility for operating and maintaining any facilities constructed under this Article shall be separate from, and in addition to, the Allocation Holder's responsibility to pay Annual O&M Expenses as described in Article VII.

ARTICLE V – DROUGHT AND WATER SHORTAGE RESPONSE PLAN.

The Allocation Holder shall develop a Drought and Water Shortage Response Plan that is acceptable to both the Division and the Government prior to withdrawing any water. The Allocation Holder shall implement this Plan during droughts and other water shortages.

ARTICLE VI – MEASUREMENT OF WITHDRAWALS AND RELEASES.

The Allocation Holder agrees to furnish and install, without cost to the State, suitable meters or measuring devices satisfactory to the Government and to the Division for the measurement of water that is withdrawn by the Allocation Holder from the Project by any means other than through the Project outlet works. Such devices shall be available for inspection by Government and Division representatives at all reasonable times. The Allocation Holder shall furnish to the Division monthly statements of all such withdrawals, showing the total amount withdrawn each month. The Allocation Holder shall also furnish to the Division monthly statements showing the amount withdrawn through their intake each day. Water supply releases through the Project outlet works shall be made in accordance with written schedules furnished by the Allocation Holder and approved by the Government. The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of Jordan Water Supply Storage.

ARTICLE VII – PAYMENTS.

In consideration of the right to utilize the aforesaid allocation of water supply from the Jordan Water Supply Storage for municipal and industrial water supply purposes, and for other contractual rights specified in this Contract, the Allocation Holder shall pay the following sums to the State.

(A) Construction and Interest Costs:

- (1) Level I Allocation Costs Amount: Level I Allocation Holders are responsible for a proportional share of the State's Total Capital and Interest Costs. The Commission approved for the first time a three (3) percent allocation to the Allocation Holder on March 9, 2017. Based on the newly approved Level I Allocation, the Allocation Holder is responsible for three (3) percent of the Total Capital and Interest Costs, totaling \$200,437.80 (i.e. 3% x \$6,681,259.94).
- (2) Level II Allocation Costs Amount: Level II Allocation Holders are responsible for a proportional share of the State's Interest Costs. The Commission approved for the first time a three (3) percent Level II Allocation to the Allocation Holder. Based on the newly approved Level II Allocation, the Allocation Holder is responsible for three (3) percent of the Interest Costs, totaling \$70,901.27 (i.e. 3% x \$2,363,375.66).
- (3) Payment: The Allocation Holder shall pay the total amount for both the Level I and Level II Allocation Costs (i.e. \$271,339.07) within 30 days of receipt of the invoice from the Division.

- (B) Annual Operation and Maintenance (O&M) Expenses: The Allocation Holder is responsible for and shall pay six (6) percent of the State's share of annual O&M expenses for each Calendar Year the allocation is effective. The amount of each annual payment will be based on the actual O&M expense for the preceding Calendar Year. Payment of annual O&M costs shall be made within 30 days of invoice from the Division.
- (C) Administrative Costs: The Allocation Holder shall pay the State \$500 per year to cover the State's administrative costs. Payment shall be made within 30 days of receipt of invoice from the Division.
- (D) Major Replacement Costs: The Allocation Holder shall pay six (6) percent of the State's share of Major Replacement Costs. Payment of Major Replacement Costs shall be made in a lump sum. The State will send an invoice to the Allocation Holder upon substantial completion of construction. This payment shall be due within 30 days of receipt of invoice from the Division.
- (E) Major Rehabilitation Costs. The Allocation Holder shall pay six (6) percent of the State's share of annual Major Rehabilitation Costs. This rate of payment shall apply to all invoices received from the Government following the effective date of this Contract regardless of the date on which such rehabilitation costs were incurred by the Government or any other entity. The amount of each annual payment will be based on the actual rehabilitation costs for the preceding Calendar Year. The annual payment of these rehabilitation costs shall be made within 30 days of receipt of invoice from the Division.

ARTICLE VIII – EFFECTIVE DATE OF ALLOCATION AND DURATION OF CONTRACT.

Pursuant to 15A NCAC 02G .0502(5), the effective date of the allocation is the date that the Commission approved the allocation (i.e. March 9, 2017). This Contract is predicated on the Commission's allocation decision and shall remain in full force and effect unless and until the Commission acts to revise or rescind the Allocation Holder's allocation. This Contract may be modified by the parties by mutual agreement.

ARTICLE IX – RELEASE OF CLAIMS AND PRESERVATION OF AUTHORITY.

To the extent permitted by law, the Allocation Holder shall hold and save the Government and the State, including its officers, agents and employees, harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project or withdrawal or release of water from the Project made or requested by the Allocation Holder, or as a result of the construction, operation or maintenance of the water supply facilities and appurtenances thereto owned and operated by the Allocation Holder, except for damages due to the sole fault or negligence of the State of North Carolina, the Government or its contractors. Nothing in this Contract shall restrict the

State in the exercise of any right or duty of the State, including rights or duties related to the conduct of investigations, collection of information and issuance of permits.

ARTICLE X – NO TRANSFER OR ASSIGNMENT.

The Allocation Holder shall not transfer or assign this Contract or any rights acquired thereunder, nor suballot Jordan Water Supply Storage or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this Contract. The Allocation Holder shall not infringe on the authority of the Commission to allocate Jordan Water Supply Storage. This Article shall not be construed so as to limit the Allocation Holder's ability to receive water withdrawn from Jordan Water Supply Storage through an intake operated and/or maintained by another allocation holder.

ARTICLE XI – CONTRACT ADMINISTRATORS.

The contract administrator for the Allocation Holder shall make the payments specified in this Contract to the contract administrator for the State. The administrator for the Allocation Holder shall be the following person:

Bryan Gruesbeck
Town Manager
Town of Pittsboro
P.O. Box 759
Pittsboro, NC 27312

The Allocation Holder shall be responsible for providing written notification to the State in the event the name and/or address for the Allocation Holder's designated contract administrator changes.

The contract administrator for the State and Department shall be the following person:

Kim Nimmer, Water Supply Planning
Division of Water Resources
Department of Environmental Quality
1611 Mail Service Center
Raleigh, North Carolina 27699-1611

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF:

TOWN OF PITTSBORO

BY _____

DATE: _____

Bryan Gruesbeck
Town Manager

ATTEST:

BY _____

(SEAL)

STATE OF NORTH CAROLINA

BY _____

DATE: _____

Dr. A. Stanley Meiburg
Chairman, NC Environmental
Management Commission

ATTEST:

BY _____

(SEAL)



MEMORANDUM

TO: Mayor and Board of Commissioners

FROM: Heather Meacham, Finance Director

SUBJECT: Budget Amendment for Water Supply Storage in B. Everett Jordan Lake

DATE: February 24, 2020

Background: The Town of Pittsboro has a contract (see attached) to sign with the State regarding our reserve allocation of 6% of the water supply storage held by the State in Jordan Lake. This contract is just to reserve our allocation, it is not giving us anything else or covering any other construction costs. Once this contract is signed, we will be required to pay to the State an amount of \$276,839.07. The breakdown of this amount is below.

- Level I Costs – 3% of Total Capital and Interest (one time) - \$200,437.80
- Level II Costs – 3% of Interest only (annually until we convert from Level II to Level I) - \$70,901.27
- Annual O&M Expenses – estimated at \$5,000
- Administrative Costs - \$500

The attached budget amendment would appropriate the funds from the System Development Fee capital reserve fund and appropriate the associated expenditures.

Action Requested: That the Board of Commissioners adopt the attached budget ordinance amending the FY 19-20 operating budget to appropriate funds from the System Development Fee Capital Reserve Fund to cover the fees associated with signing this contract. Additionally, authorize the interim-Town Manager to sign the associated contract.

