

## **MEMORANDUM OF AGREEMENT FOR THE WESTERN INTAKE PARTNERSHIP**

WHEREAS, Chatham County, the City of Durham, Town of Pittsboro, and Orange Water and Sewer Authority were all founding members of the Jordan Lake Partnership; and

WHEREAS, Chatham County, the City of Durham, Town of Pittsboro, and Orange Water and Sewer Authority were each granted allocations of water supply storage in B. Everett Jordan Reservoir (“Jordan Lake”) by working cooperatively in the Jordan Lake Partnership; and

WHEREAS, Chatham County, the City of Durham, Town of Pittsboro, and Orange Water and Sewer Authority (“Partner” or “Partners” or “Parties”) have been working cooperatively since 2012 as the Western Intake Partnership (“WIP”) to plan for the construction of facilities on the western side of Jordan Lake to obtain access to their Jordan Lake allocations; and

WHEREAS, the Jordan Lake Partnership Western Intake Feasibility Study (“Hazen Study”) assisted the WIP in determining that the most favorable alternative to meet the water supply needs of the individual members as well as the group as a whole is a Regional Water Treatment Facility (“RWTF”) on the west side of Jordan Lake; and

WHEREAS, the Hazen Study estimated that once the project to design and construct the RWTF is initiated, it will take approximately 3 years for preliminary engineering, field evaluations and permitting, 2 years for property acquisition and facility design, and 3 years for construction – all assuming no major delays.

WHEREAS, environmental review and environmental permitting might take 10 years or more; if this effort were to begin now the Hazen Study schedule projects that the RWTF and the associated system connections could be online around mid-2035; and

WHEREAS, the Jordan Lake Western Intake Partners Economic Feasibility Study (“Raftelis Study”) assessed the collective benefits of the treatment plant and the individual impacts to each Partner; and, suggested an optimal time line for undertaking the RWTF Project; and

WHEREAS, the Raftelis Study recommended that the WIP:

1. Develop a plan to begin construction by 2025 so the RWTF can be online by 2031, and
2. Adopt a collaborative approach to RWTF Project governance, including its financing, ownership, and management; and

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WHEREAS, this Agreement for the Western Intake Partnership (“Agreement”) is authorized by North Carolina General Statute (NCGS) 160A-20.1 and 160A-460 *et seq.*

THEREFORE, BE IT RESOLVED, that the Parties pledge to work together as the Western Intake Partnership (“WIP”) to achieve the foregoing goals; and,

BE IT FURTHER RESOLVED, that the Parties will collaborate through the WIP to begin the preliminary field evaluations and permitting work while simultaneously working on governance, all prior to any design and construction work; and,

BE IT FURTHER RESOLVED, that the WIP will be guided by the principles of stewardship of the public interest in this common water supply, collaboration, sustainability, mutual and collective benefit, shared responsibility, equal representation, and financial stability, in support of the performance of this Agreement.

NOW, THEREFORE, for and in consideration of the recitals and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

- 1) Management Team. The activities and management of the WIP will be guided by the Management Team. The Management Team shall consist of the Manager or Executive Director, or his/her designee, from each Partner. The Management Team will seek to act by consensus, and after their approval, will advise the Lead Agency on the Projects to be undertaken by the WIP, including selecting consultants.
- 2) Lead Agency. The City of Durham will be empowered to act as the Lead Agency to accomplish the purposes approved by the Management Team; as such, the Lead Agency will be the fiscal and contracting agent for the WIP, and will enter into necessary contracts in support of the WIP. The Lead Agency will only enter into contracts on behalf of the WIP after approval of the contract by the Management Team.  
  
If the City of Durham is a Declining Partner (defined in 4.a, below), the remaining Participating Partners shall retain the right to enter into such contracts as they may deem necessary and appropriate. In such case, the City of Durham will not act as the Lead Agency and the Participating Partners must select an Alternate Lead Agency for those particular contracts.
- 3) Projects. The Partners agree that the following projects will be among those undertaken by the WIP. The anticipated projects and their budgets are based on the Hazen Study. The Management Team may advise variations of these anticipated projects or may advise additional projects.

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The Lead Agency shall proceed with a Project, including consultant selection, requests for qualifications, project scoping, and other pre-construction actions, only after the Management Team has reached consensus and approved those steps necessary for Project execution. In the event consensus is not reached on the steps of a Project, steps toward Project execution may still be undertaken by those in favor, provided the Parties in favor represent more than fifty percent of the cost share percentages set out in 4.c, below.

<b>Anticipated Projects</b>	<b>Anticipated Budget (\$ Millions)</b>
Policy and Governance - Initial Planning - Organizational Development - Construction, Ownership, Management and Operation	\$0.7
Preliminary Engineering - Source Water Treatability Study/Preliminary Design - Pipeline Routing Study - Hydraulic Evaluations - Preliminary Engineering Report	\$1.4
Field Evaluations (Survey, SUE*, Environmental Resources) - Intake/Raw Water Pump Station - Water Treatment Facilities/Booster Pump Stations - Pipelines	\$1.4
Permitting - USACE Land Use Request - NEPA/SEPA Environmental Assessment - DWR Site Evaluation	\$0.7
Escalation from 2014 (20%)	\$0.8
<b>Total</b>	<b>\$5.0</b>

\* Subsurface Utility Exploration

- 4) **Cost Sharing.** Each Partner will contribute by payment of their share of the actual costs of each project in which they elect to participate by payment to the City of Durham in accordance with the cost sharing formula provided in this Paragraph.
  - a) It is not required that every Partner participate in every Project. When a Partner declines to participate in a Project (“Declining Partner”), the remaining Partners (“Participating Partners”) may reassign the Declining Partner’s cost share as the Participating Partners agree. In such cases, the Partners will memorialize who is and who is not participating in any given project, and what the revised cost share is for the Participating Partners, by a letter of agreement signed by the members of the Management Team.
  - b) Should a Declining Partner later choose to participate in a project(s), the Declining Partner must first reimburse the Participating Partners any costs

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a Declining Partner avoided by declining to participate initially, plus interest calculated to accrue at the rate of 5% per year.

- c) The following cost sharing formula is based on each Partner’s Jordan Lake water supply storage allocation.

<b>Party</b>	<b>Jordan Lake Allocation</b>	<b>Cost Share</b>
City of Durham	16.5%	40.74%
Chatham County	13%	32.10%
Town of Pittsboro	6%	14.81%
Orange Water & Sewer Authority	5%	12.35%
Total	40.5%	100.00%

- 5) Invoicing. The Lead Agency (or Alternate Lead Agency, if applicable) will invoice each Participating Partner for its share of the costs as the Lead Agency incurs project costs, and each Participating Partner will pay the invoice within 30 days.
- 6) Duration, Amendment and Termination. The term of this Agreement shall begin upon the approval of the second Party and shall last until June 30, 2023. However, the Agreement shall only become binding on each Party after approval and execution of the Agreement by that Party. The Agreement may be terminated, or extended, upon mutual written agreement of at least two of the original Parties. This Agreement may be amended with written approval of all Parties.
- 7) Withdrawal from Agreement. Any Party may withdraw from this Agreement with 30 days written notice to the other parties, provided that any outstanding financial obligations shall survive such withdrawal until satisfied. A financial obligation will become outstanding when a Partner agrees to be a Participating Partner in a project. The City of Durham will confirm receipt of such withdrawal and will immediately notify the other Parties within 30 days of receipt of such withdrawal.
- 8) Miscellaneous Provisions.
  - a) The singular of terms used in the Agreement shall include the plural, and the masculine shall include the feminine, and vice versa.
  - b) A signed copy of this Agreement shall be considered as an original.
  - c) The Parties, and all subcontractors, shall comply with the E-Verify requirements of Article 2, Chapter 64, of the North Carolina General Statutes.
  - d) Service or all notices under this Agreement shall be sufficient, if given personally, by registered or certified mail, return receipt requested, and mailed to the party involved at the address and to the attention of the

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person set forth below, or to such other person or address as said party may provide in writing from time to time. Any such notice mailed to such address shall be effective upon the date received as shown by the return receipt or otherwise.

CHATHAM COUNTY  
Public Utilities Director  
PO Box 910  
Pittsboro, NC 27312

CITY OF DURHAM  
Director  
Department of Water Management  
101 City Hall Plaza  
Durham, NC 27701

ORANGE WATER AND SEWER AUTHORITY  
Executive Director  
400 Jones Ferry Road  
Carrboro, NC 27510-0366

TOWN OF PITTSBORO  
Town Engineer  
PO Box 759  
Pittsboro, NC 27312

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\_\_\_\_\_  
Dan LaMontagne, County Manager  
Chatham County

ATTEST: \_\_\_\_\_

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Thomas J. Bonfield, City Manager  
City of Durham

ATTEST: \_\_\_\_\_

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Ed Kerwin, Executive Director  
Orange Water and Sewer Authority

ATTEST: \_\_\_\_\_



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Bryan Gruesbeck, Town Manager  
Town of Pittsboro

ATTEST: \_\_\_\_\_