

**CONTRACT BETWEEN THE STATE OF NORTH CAROLINA  
AND  
THE TOWNS OF CARY AND APEX  
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 TOWNS OF CARY AND APEX (“Allocation Holders”);

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 forty-two and seven tenths (42.7) percent of the water supply storage held by the State to the Allocation Holders for the use of Cary, Apex and the Wake County Portion of Research Triangle Park (also known as “Wake Co-RTP” and “RTP-South”); and

WHEREAS, by separate agreement, the Town of Cary will administer the three and five tenths (3.5) percent Level I allocation granted to Wake County and has assumed the contractual obligations related to the allocation; 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 Holders (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 Holders 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 HOLDERS.

- (A) Right to Withdraw Level I Allocation: The Allocation Holders have a forty-two and seven tenths (42.7) percent Level I Allocation. Subject to the limitations set forth in this Contract and any other requirements provided by law, the Allocation Holders have the right to withdraw up to forty-two and seven tenths (42.7) percent of the Jordan Water Supply Storage. The Allocation Holders’ water withdrawals will be restricted during water shortage conditions according to the Allocation Holders’ approved drought and water shortage response plan under Article V, and in accordance with other laws. If the Allocation Holders’ storage space becomes depleted, the Allocation Holders’ right of withdrawal will be limited to a maximum withdrawal of forty-two and seven tenths (42.7) percent of the portion of Net Inflow allocated to water supply (forty-two and seven tenths

(42.7) percent of 32.62 percent, which equals 13.9287 percent of the Net Inflow), for as long as the Allocation Holders' water supply storage space is depleted.

- (B) The Allocation Holders' right to withdraw is contingent upon compliance with this Contract. The Allocation Holders allocation may be revised or rescinded as set forth in 15A NCAC 02G .0507.
- (C) The Allocation Holders 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 Holders 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 Holders 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 Holders 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.
- (D) During any construction, operation and maintenance by the Allocation Holders of any facilities, the Allocation Holders 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.
- (E) The Allocation Holders 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 Holders' responsibility to pay Annual O&M Expenses as described in Article VIII.

#### ARTICLE V – DROUGHT AND WATER SHORTAGE RESPONSE PLAN.

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

#### ARTICLE VI – MEASUREMENT OF WITHDRAWALS AND RELEASES.

The Allocation Holders agree 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 Holders 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 Holders shall furnish to the Division monthly statements of all such withdrawals, showing the total amount withdrawn each month. The Allocation Holders 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 Holders 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 – PROVIDING ACCESS.

The Allocation Holders shall provide access at their existing intake site to any other Jordan Lake water allocation holders that request access to utilize their allocations if:

- (A) the Division determines that access is technically feasible and would not materially reduce the ability of the Allocation Holders to withdraw their entire allocation under normal conditions;
- (B) the Allocation Holders are not liable, without their consent, for any costs associated with obtaining any necessary permits, engineering design or construction associated with access; and
- (C) the Allocation Holders are not liable, without their consent, for any increased operation and maintenance costs resulting from provision of access.

#### ARTICLE VIII – 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 Holders 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 allocated to the Allocation Holders a forty-two and seven tenths (42.7) percent allocation on March 9, 2017, which represents a seven and two tenths (7.2) percent increase in the Allocation Holders' previous Level I Allocation. Based on the increase in Level I Allocation, the Allocation Holders

are responsible for seven and two tenths (7.2) percent of the Total Capital and Interest Costs, totaling \$481,050.72 (i.e. 7.2% x \$6,681,259.94).

- (2) Payment: The Allocation Holders shall pay the total amount for Level I Allocation Costs (i.e. \$481,050.72) within 30 days of receipt of the invoice from the Division.
  
- (B) Annual Operation and Maintenance (O&M) Expenses: The Allocation Holders are responsible for and shall pay forty-two and seven tenths (42.7) 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 Holders 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 Holders shall pay forty-two and seven tenths (42.7) 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 Holders 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 Holders shall pay forty-two and seven tenths (42.7) 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 Major Rehabilitation Costs were incurred by the Government or any other entity. The amount of each annual payment will be based on the actual Major Rehabilitation Costs for the preceding Calendar Year. The annual payment of these Major Rehabilitation Costs shall be made within 30 days of receipt of invoice from the Division.

#### ARTICLE IX – EFFECTIVE DATE OF ALLOCATION AND DURATION OF CONTRACT.

Pursuant to 15 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 Holders' allocation. This Contract may be modified by the Parties by mutual agreement.

ARTICLE X – RELEASE OF CLAIMS AND PRESERVATION OF AUTHORITY.

To the extent permitted by law, the Allocation Holders 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 Holders, or as a result of the construction, operation or maintenance of the water supply facilities and appurtenances thereto owned and operated by the Allocation Holders, 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 XI – NO TRANSFER OR ASSIGNMENT.

The Allocation Holders 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 Holders 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 Holders' ability to receive water withdrawn from Jordan Water Supply Storage through an intake operated and/or maintained by another allocation holder.

ARTICLE XII – CONTRACT ADMINISTRATORS.

The contract administrator for the Allocation Holders 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:

Jamie Revels  
Utilities Director  
Town of Cary Utilities Department  
PO Box 8005  
Cary, NC 27512

with copies of notices provided to:

Water Resources Director  
Town of Apex  
Water Resources Department  
P.O. Box 250  
Apex, North Carolina 27502

The Allocation Holders shall be responsible for providing written notification to the State in the event the name and/or address for the Allocation Holders' 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 pages]

IN WITNESS WHEREOF:

TOWN OF CARY

BY \_\_\_\_\_

Harold Weinbrecht  
Mayor

DATE: \_\_\_\_\_

ATTEST:

BY \_\_\_\_\_

Virginia Johnson  
Town Clerk

(SEAL)

TOWN OF APEX

BY \_\_\_\_\_

Jacques Gilbert  
Mayor

DATE: \_\_\_\_\_

ATTEST:

BY \_\_\_\_\_

Donna B. Hosch, MMC, NCCMC  
Town Clerk

(SEAL)

STATE OF NORTH CAROLINA

BY \_\_\_\_\_

DATE: \_\_\_\_\_

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

ATTEST:

BY \_\_\_\_\_

(SEAL)