REQUEST FOR BOARD ACTION

ITEM NO. 23.

DATE OF MEETING: September 8, 2009

REQUESTED BY: Michael Mack, Public Utilities Director

SHORT TITLE: Resolution Authorizing an Interlocal Agreement for Allocation of O&M and Capital Replacement Costs for the Highway 117 Wastewater Transmission Line Between Pender County and the Town of Burgaw

BACKGROUND: In February, 2007 Pender County entered into an agreement with the Town of Burgaw for the construction of a public sewer line from the Town of Burgaw to the Town of Wallace STEVCO wastewater plant. The County agreed to pay for the cost of upsizing the line to 20" to the Exit 390 interchange, and to 24" from Exit 390 interchange to the plant, for the purpose of providing capacity for stimulating growth along the corridor in the county's jurisdiction. The estimated oversizing cost in 2007 was $3,000,000. The Town is responsible for bidding and constructing the project, and the County is responsible for making payment to the Town when billed by the engineer as construction progresses.

The agreement approved in 2007 did not include details related to operation and maintenance responsibilities of the Town or the County, therefore an O&M Cost Share Agreement is needed to outline cost share responsibilities. The County and Town staffs have developed a proposed cost share agreement, a copy of which is attached. In summary, the agreement addresses fixed costs, variable costs and capital reserves. The agreement provides for the following: Fixed Costs-Pender County is responsible for 25% (estimated at $18,204 annually) of the fixed cost and the Town is responsible for 75% (estimated at $54,610 annually). Variable Costs-the cost share is based on actual flow contribution of each party. The total estimated annual cost is $25,400. Initially, the Town would be responsible for 100% as there would be no "county" customers, but as county customers come on line-the county flow percentage will increase. Capital Reserves-Pender County is responsible for 25% and the Town is responsible for 75%. For the pump stations, the County's estimated contribution is $20,625 annually for 20 years; and the Town's estimated contribution is $61,875 annually for 20 years. For the lines, the County's estimated contribution is $43,125 annually for 60 years; and the Town's estimated contribution is $129,375 annually for 60 years. Each party is responsible for reserving capital reserve funds, and for making them available when needed for capital repairs.

The County has previously set aside $1.1 million for the County's share of the construction project of the total 2007 cost estimate of $3 million. The actual cost will not be known until the project is bid, and a capital project ordinance will need to be adopted by the Board at that time. Additional project funding required is proposed to be appropriated from sewer capital monies set aside in a capital reserve account.

SPECIFIC ACTION REQUESTED: To adopt a resolution authorizing an agreement entitled Interlocal Agreement for Allocation of O&M and Capital Replacement Costs for the Highway 117 Wastewater Transmission Line Between Pender County and the Town of Burgaw

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

PB
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the attached agreement entitled INTERLOCAL AGREEMENT FOR ALLOCATION OF O&M AND CAPITAL REPLACEMENT COSTS FOR THE HIGHWAY 117 WASTEWATER TRANSMISSION LINE BETWEEN PENDER COUNTY AND THE TOWN OF BURGAW is hereby authorized. The County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED_____ SECONDED_____

APPROVED_____ DENIED_____UNANIMOUS

YEA VOTES: Tate___ Brown ___ Blanchard ___ Rivenbark ___ Williams ___

_____ _____
Jimmy T. Tate, Chairman Date

_____ _____
ATTEST Date

STATE OF NORTH CAROLINA

County of Pender

Town of Burgaw

INTERLOCAL AGREEMENT FOR ALLOCATION OF O&M AND CAPITAL REPLACEMENT COSTS FOR THE HIGHWAY 117 WASTEWATER TRANSMISSION LINE BETWEEN PENDER COUNTY AND THE TOWN OF BURGAW

W I T N E S S E T H:

WHEREAS, Pender County and the Town of Burgaw previously entered into an interlocal agreement for the construction and operation of pump stations and a wastewater transmission line along Highway 117 from Burgaw to Wallace; and

WHEREAS, Pender County and the Town of Burgaw desire to clarify how the costs for both operation and maintenance of the transmission line and pump stations as well as the capital replacement costs for the transmission line and pump stations; and

WHEREAS, It is the intent of the Parties that this Agreement shall not modify any term or condition of the prior agreement except as expressly set forth herein; and

WHEREAS, The Parties have agreed to split the costs of operating the line and pump stations into fixed and variable portions and have agreed that the fixed costs shall be allocated on the basis of 75% to the Town and 25% to the County, with variable costs to be allocated based upon each parties actual flow contribution; and

WHEREAS, The Parties have agreed that each party shall be responsible for payment of its share of replacement costs of the pump stations and the transmission pipeline and that each party shall establish and fund their own Capital Reserve account to meet its obligation based upon the judgment of its Governing Board and Staff.

Now, therefore, the County of Pender (County) and the Town of Burgaw (Town) do hereby agree as follows:

1. FIXED COST ALLOCATIONS: The County and Town agree and understand that there exist certain fixed costs to operate and maintain the transmission line and pump stations. Town and County agree that the fixed costs shall be allocated on the basis of Seventy-five percent (75%) to the Town and Twenty-five percent (25%) to the County. Town shall bill and invoice County for fixed costs on a monthly basis, and County shall tender payment within fifteen (15) days of receipt of each invoice.

2. FIXED COST COMPONENTS: For purposes of this Agreement fixed costs shall be deemed to consist of the following:

A. Twenty (20) hours per week of one (1) employee's time, plus fifty percent (50%) of the cost of the employee's benefits (to be the same as offered to other Town employees) and 50 % of the cost of Town supplied uniforms (Estimated to be $30,939); and

B. The cost of insuring the transmission line and pump stations from damage due to peril (Estimated to be $10,000); and

C. Fifty Percent (50%) of the cost of the training, including travel and lodging as required, of the employee identified in Section A above (Estimated to be $625); and

D. Postage and telephone costs related to the transmission line and pumps, which shall not include costs of mailing individual bills to customers, and for the first year in which the line is operable. (Estimated to be $250); and

E. Buildings & Grounds Maintenance for the first year in which the line is operable. (Estimated to be $1,000); and

F. The cost of supplies related to the transmission line and pump stations, such as testing supplies, as well as general office supplies, and for the first year in which the line is operable. (Estimated to be $2,500); and

G. The cost of repairing, replacing and rebuilding short-lived assets, such as rebuilding pumps as set forth in the Engineering Report prepared by McKim & Creed, which cost shall be fixed for the first twenty years in which the line is operable in the amount of Twenty Seven Thousand Five Hundred Dollars ($27,500). After twenty years an estimate for fixed costs shall be prepared by a professional engineer in the same manner as the initial estimate and used thereafter for determining this portion of fixed costs. It is understood and agreed that actual yearly costs for short-lived assets will vary widely. County shall pay its share of this to Town to use as Town sees fit, and Town shall bear all the actual costs of repair or replacement of such short term assets.

3. FIXED COST SETTLEMENT AND RECONCILIATION: It is estimated that the fixed costs for the first year of operations will be Seventy Two Thousand Eight Hundred Fourteen Dollars ($72, 814). It is agreed that Town will bill County in monthly installments based upon this cost estimate. At the end of each year of the contract either Town or County may request a reconciliation or settlement based upon actual costs. If actual costs for items A, B, C, D, E and F of Section 2, plus the fixed cost established for 2(G), exceed the amount paid by the County, then the County shall be entitled to a refund of the excess amount paid. Conversely if those same costs exceed the amount paid by the County, the Town shall be entitled to receive additional payment from the County for the actual costs. In the event Town and County do not agree as the settlement amount, then they shall mutually agree upon a professional engineer to determine the fixed costs in accordance with the definitions set forth above.

4. CAPITAL RESERVE: Town and County estimate that the two pump stations which comprise part of the project will require replacement in twenty (20) years and that the transmission line itself

will require replacement in sixty (60) years. Town shall be responsible for Seventy-five percent (75%) of the replacement costs and County shall be responsible for Twenty-five percent (25%) of the replacement costs. (Pump Station # 1 and # 2 Annual Replacement Reserve = $82,500 and Transmission Main Annual Replacement Reserve = $172,500)

5. VARIABLE COSTS: Town and County agree that the costs for the variable expenses, which are not any of those included within the fixed or capital costs, shall be based upon the actual flow into the transmission system. Such costs shall include:

   A. Utility costs to operate the transmission line (estimated cost of $18,000);

   B. Vehicle maintenance and repair costs (estimated cost of $1,200);

   C. Automotive supplies (estimated cost of $1,200);

   D. Contract services (estimated cost of $5,000).

   The costs above shall be determined by flow into the system. Initially it is anticipated that the Town shall have all the flow and bear all the variable costs. Over the course of time, the variable costs shall be allocated to each party based upon the actual flow contribution by each party. Town shall bill and invoice County for variable costs on a monthly basis, and County shall tender payment within fifteen (15) days of receipt of each invoice. Given the inherently variable nature of such cost allocation, the actual costs shall be readjusted yearly. In the event the parties cannot agree upon the allocation, a registered engineer acceptable to both shall make the allocation.

   An estimate of all Operations & Maintenance Costs is attached as Exhibit A.

6. TERMINATION OF THIS AGREEMENT: If either fails to keep and perform each and all of the covenants contained herein, then and in that event, the other party, after notifying the nonconforming party not less than thirty (30) days in advance and upon the failure of the other party to comply within such period, it may at its option either terminate the agreement or maintain an action in a court of competent jurisdiction for damages, specific performance, or injunctive relief. It is agreed that either party's failure to insist upon the strict performance of any provision of this agreement or to exercise any right based upon a breach thereto or the acceptance of any performance during such breach, shall not constitute a waiver of rights under this agreement. The parties may terminate this agreement upon mutual agreement in writing.

7. AMENDMENT OF AGREEMENT: This agreement may be amended or modified upon mutual agreement of the respective parties provided that any such amendment shall be reduced to writing and executed by both parties.

8. NON-ASSIGNABILITY: The rights and duties under this agreement shall not be assigned by any of the parties without the written consent of the other.

9. NOTICES: All notices, requests and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered, or mailed first class, postage prepaid, addressed to:

   A. Town of Burgaw:
      Martin Beach, Town Manager
      109 N. Walker Street
      Burgaw, North Carolina 28425

   B. Pender County:
      Michael Mack, Director
      Pender County Utilities
      PO Box 995
      605 E. Fremont Street
      Burgaw, North Carolina 28425

10. ASSURANCES: The parties hereto will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances regarding toxic, hazardous and solid wastes and any other pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. The parties hereto will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Environment, Health and Natural Resources, the United States Environmental Protection Agency, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued hereunder.

11. ENTIRE AGREEMENT: This agreement constitutes the entire understanding of the parties. This Agreement does not modify or alter the existing Interlocal Agreement with regard to Construction.

12. BINDING EFFECT: This agreement shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties.

13. REFERENCE: Use of the masculine herein includes the feminine and neuter; Singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of the agreement.

14. INTERPRETATION: All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina, In the event of a conflict between the

various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.

15. IMMUNITY NOT WAIVED: This agreement is governmental in nature, for the benefit of the public, and is not intended to be for private profit or gain. Neither party intends to waive its sovereign immunity by reason of this agreement.

16. SAVING CLAUSE: If any section, subsection, paragraph, sentence, clause, phrase or portion of this agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed in their respective names and have affixed the necessary seals and attested thereto.

[SEAL]

Pender County

_____

Chairman

ATTEST:

_____

Clerk to the Board

[SEAL]

Town of Burgaw

_____

Mayor

ATTEST:

_____

Clerk to the Board

EXHIBIT A

US 117 Sewer Operations and Maintenance Annual Estimates

Fixed

Salaries (1 employee 20 hrs. per week)	$22,736
Benefits (@33%)	$ 7,503
Travel/Training	$ 625
Telephone/Postage	$ 250
Building & Grounds	$ 1,000
Department Supplies	$ 2,500
Uniforms	$ 700
Insurance	$10,000
Short Lived Asset Reserve	$27,500
	$72,814

Note: Pender County Fixed Cost Share is 25%/Town of Burgaw Share is 75%

Variable

Utilities	$18,000
M&R Vehicles	$ 1,200
Auto Supplies	$ 1,200
Contract Services	$ 5,000
	$25,400
Total:	$98,214

Note: Variable Costs are Based on Flow Contribution

Capital Reserve

Pump Station Replacement (20 years)	$82,500 ($1,650,000 over 20 years)
Line Replacement (60 year life)	$172,500 ($10,350,000 over 60 years)

Note: Pender County Capital Reserve Share is 25%/Town of Burgaw Share is 75%