



REQUEST FOR BOARD ACTION

ITEM NO. 24.

DATE OF MEETING: September 8, 2009

REQUESTED BY: Michael G. Mack, Director, PCU

SHORT TITLE: Resolution Authorizing the Interlocal Agreement with the Cape Fear Public Utility Authority (CFPUA) to share in the costs for development of regional wastewater infrastructure to serve the US 421 Industrial Corridor in New Hanover and Pender County.

BACKGROUND: For many years, the US 421 corridor has been identified as a growth area for the expansion of the regional economy and has given both Pender and New Hanover Counties an opportunity to develop the US 421 North area as a major industrial and commerce corridor supplemented with residential development. Pender County implemented their strategy for industrial economic development of the corridor by purchasing approximately 350 acres of land from BASF for the location of a county water plant, a future wastewater treatment plant, and an industrial/commerce park in 2006.

In 1996, New Hanover County secured a 4.0 MGD wastewater discharge permit for the Northside Wastewater Treatment Facility. This permit has never been acted on and is due to expire in November 2011.

Recognizing the value of partnering with New Hanover County to provide a regional solution to creating water and wastewater infrastructure along the corridor for the benefit of both counties, an Interlocal Agreement was adopted by both counties in 2007 to initiate and equally share in the cost of an engineering analysis and environmental assessment for a regional wastewater treatment plant benefitting from the NHC discharge permit and the Pender County industrial park site. This effort was performed by McKim & Creed.

Subsequent to the merger of the New Hanover County and City of Wilmington utility operations into the Cape Fear Public Utility Authority (CFPUA) on July 1, 2008, the New Hanover County's 4.0 MGD wastewater discharge permit also transferred to CFPUA.

CFPUA, with Pender County as a stakeholder, desired to determine the best strategy to provide wastewater service to the US 421 Corridor and preserve the Authority's NPDES permit for discharge of 4 million gallons per day of treated wastewater effluent to the Cape Fear River.

They contracted with McKim & Creed to prepare a US 421 Corridor Wastewater Master Plan. From the findings of the Master Plan, an opportunity for a regional approach in conjunction with Pender County's shared interest in developing a public wastewater system still exists in this area.

On June 22, 2009, the Pender County Board of Commissioners approved a resolution to endorse a partnership with CFPUA to provide regional wastewater infrastructure to the US 421 Corridor.

On July 8, 2009, the Cape Fear Public Utility Authority Board of Directors approved a similar resolution.

Subsequently, staff from Pender County and CFPUA have drafted, revised, and agreed to recommend the Interlocal Agreement to our respective Boards. The Board of CFPUA will be presented the Interlocal Agreement at their September 9, 2009 meeting.

The primary purpose of the Interlocal Agreement is to establish a method of providing for cost sharing for the development of a revised existing Environmental Assessment (EA), and Engineering Alternative Analysis (EAA), and the design and permitting of a regional wastewater treatment facility for the provision of wastewater treatment on the US Highway 421 Industrial Corridor of New Hanover and Pender Counties. The estimated cost for the work is \$663,300 plus a \$66,330 budget for contingencies (10%), not to exceed \$729,630. Pender County's ½ share equates to \$331,650 plus a \$33,165 allowance for contingencies, not to exceed \$364,815. Funding for this Agreement is available in the Wastewater Treatment Plant Capital Improvement Program Budget (Fund 84).

SPECIFIC ACTION REQUESTED: To adopt a resolution authorizing the execution of the attached Interlocal Agreement with CFPUA and the encumbrance of \$364,815 from Fund 84 to provide regional wastewater infrastructure to the US 421 Corridor.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

MB
Initial

RESOLUTION

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

the Board authorizes the adoption of a resolution authorizing the execution of the attached Interlocal Agreement with CFPUA and the encumbrance of \$364,815 from Fund 84 to provide regional wastewater infrastructure to the US 421 Corridor. The Chairman and/or County Manager are authorized to execute any and all documents to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

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

Jimmy T. Tate, Chairman 09/08/09
Date

ATTEST 09/08/09
Date

STATE OF NORTH CAROLINA

County of Pender

County of New Hanover

THIS CONTRACT is entered into this the _____ Day of _____ by and between Cape Fear Public Utility Authority, a Water and Sewer Authority organized under the laws of the State of North Carolina and Pender County, a political subdivision existing under the laws of the State of North Carolina:

W I T N E S S E T H

WHEREAS, the US 421 Industrial Corridor lies within New Hanover and Pender Counties and its development will benefit both counties

WHEREAS, the expanding regional economy has given New Hanover County and Pender County an opportunity to develop the U.S. 421 area as a major industrial corridor supplemented with residential development; and

WHEREAS, water and wastewater infrastructure is needed to support this growth; and

WHEREAS, Pender County owns a 378 acre tract of land north of the New Hanover and Pender County boundary on US Highway 421 for the development of a commerce/industrial park to promote economic development in this region in an effort to diversify and strengthen Pender County's rural local economy; and

WHEREAS, Cape Fear Public Utility Authority has a National Pollutant Discharge Elimination System (NPDES) sewer discharge permit for 4.0 million gallons per day that expires in November 2011; and

WHEREAS, Pender County is underway with the design and construction of a 2 MGD Surface Water Treatment Plant at this site; and

WHEREAS, an existing draft Environmental Assessment and an existing draft Engineering Alternative Analysis must be revised and designed and permitting completed in order to preserve the discharge permit and facilitate plans for a regional wastewater treatment facility that will provide wastewater treatment for the US Highway 421 Corridor area for the mutual benefit of New Hanover and Pender Counties.

NOW, THEREFORE, in consideration of the foregoing and the mutual benefits arising to the parties, it is hereby understood and agreed as follows.

1. PURPOSE OF AGREEMENT

The purpose of the agreement is to establish a method of providing for cost sharing for the development of a revised existing Environmental Assessment (EA), and Engineering Alternative Analysis (EAA), and the design and permitting of a regional wastewater treatment facility for the provision of wastewater treatment on the US Highway 421 Industrial Corridor of New Hanover and Pender Counties. The estimated cost for the work is \$663,300 plus a \$66,330 budget for contingencies (10%), not to exceed \$729,630.

2. RESPONSIBILITIES OF CAPE FEAR PUBLIC UTILITY AUTHORITY (CFPUA).

CFPUA shall be responsible for engaging an engineering firm to revise the existing draft EA and existing draft EAA, and provide design and permitting of a 0.5 MGD regional wastewater facility on US 421 at the Pender Industrial/Commerce Park . CFPUA will be responsible for overseeing the study and assisting the Engineering firm with any questions and direction that they may need on the project. CFPUA will be responsible for extending collaborative effort with the Pender County Utilities Director and extending project meeting invitations to same. In addition, CFPUA agrees to pay ½ the cost of the engineering project (approximately \$331,650 plus a \$33,165 budget for contingencies (10%), not to exceed \$364,815). In addition, CFPUA shall be responsible for ½ of any additional costs beyond the initial \$364,815 for the engineering project described above.

3. RESPONSIBILITY OF PENDER COUNTY

Pender County shall be responsible for providing ½ the cost of the revised existing draft EA and EAA, and design and permitting costs of a regional wastewater treatment facility for the US Highway 421 Corridor. The original estimate for said work described above is \$729,630 inclusive of 10% contingency. Pender County shall receive from CFPUA a copy of each engineering invoice for review and approval. Upon an approved review of the invoiced work, Pender County shall wire transfer their ½ portion of each invoice to CFPUA within 10 days of receipt of each invoice. In addition, Pender County shall be responsible for ½ of any additional costs approved in writing by both parties beyond the initial \$364,815 for the engineering project described above.

4. TERMINATION OF THIS AGREEMENT

a. Termination without Cause

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 thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this agreement.

5. OWNERSHIP RIGHTS

Both parties shall have ownership rights to the studies and engineering design and construction plans and specifications.

6. 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.

7. 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.

8. CONFLICT OF INTEREST.

No paid employee of the Authority or Pender County shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this agreement.

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. Authority:

Matt Jordan, CEO
Cape Fear Public Utility Authority
235 Government Center Drive
Wilmington, North Carolina 28403

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.

12. BINDING EFFECT.

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

13. CONTINUING OBLIGATION.

The parties will make and execute all further instruments and documents required to complete an environmental assessment and engineering

alternative analysis and to permit and develop a design of the regional wastewater treatment plant for US Highway 421 Industrial Corridor.

14. 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.

15. 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.

16. 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. Any fees charged in connection with the services hereunder are intended to reflect as closely as possible the Authority's actual cost, and neither party intends to waive its sovereign immunity by reason of this agreement.

17. 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]

Cape Fear Public Utility Authority

Chairman

ATTEST:

Clerk to the Board