

**NORTH CAROLINA**

**BRUNSWICK COUNTY**

**INTERLOCAL AGREEMENT  
TO SUPPORT BOILING SPRING LAKES  
DAM RESTORATIONS**

**THIS INTERLOCAL AGREEMENT** (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “County”), party of the first part and the City of Boiling Spring Lakes, a city organized and existing pursuant to the laws of the State of North Carolina and located in Brunswick County, (hereinafter referred to as “City” or “BSL”), party of the second part.

**WITNESSETH:**

**WHEREAS**, County and City desire to establish an inter-governmental approach to assist in the funding of projects to restore the BSL dams that were damaged by Hurricane Florence, as more fully described herein; and

**WHEREAS**, County and City each agree that the cooperative endeavor contemplated hereby will be beneficial to both entities; and

**WHEREAS**, County and City, in order to set out the provisions and conditions under which said services or resources will be provided, have entered into this Agreement as authorized by Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and promises contained herein, County and City do hereby agree as follows:

**BACKGROUND AND PURPOSE OF AGREEMENT**

1. In 2018, Hurricane Florence made landfall over the City of Wilmington, North Carolina and slowly progressed across Brunswick County, leaving a staggering 30+ inches of rain over four days.
2. The deluge of rainfall resulted in the failure of five dams in the City of Boiling Spring Lakes. The dams had previously combined to impound water and create the largest freshwater lake near the ocean in North Carolina.
3. After the failure of the dams, the City of Boiling Spring Lakes flooded and experienced roads that washed away, necessitating numerous National Guard rescues.
4. Prior to Hurricane Florence, only one of the five dams had been classified as “high hazard,” but after the breach of the dams, the NC Dam Safety Division of the North Carolina Department of Environmental Quality reclassified all five as high hazard. As a result of this reclassification,

the dams could no longer be engineered to be rebuilt and restored to their prior condition but had to be engineered to withstand a higher level of storm threat.

5. The reclassification to higher hazard level meant significant cost increases in the work needed to meet the new standard. Unfortunately, the City of Boiling Spring Lakes became caught in the middle of a disagreement between FEMA and NC Dam Safety as to the applicable codes and standards, with FEMA ultimately refusing to reimburse the City for the higher cost of construction that NC Dam Safety insisted the City must utilize to meet their interpretation of the Federal Dam Safety Act.
6. Current estimates for repair and reconstruction of the dams to current standards total approximately \$52 million. The City of Boiling Spring Lakes only has a population of approximately 7,200 and an annual budget of approximately \$5.5 million.
7. The City has explored or sought funding sources from the legislature of the State of North Carolina, Golden Leaf, FEMA, and Division of Water Infrastructure ARPA funding, among others.
8. The City has arranged funding sources for all but \$18 million of the funds needed for the restoration projects. Of that \$18 million, the City can obtain loans for \$15 million, but seeks assistance from the County for the remaining \$3 million to make the project financially viable.

#### **TERMS OF COUNTY'S FINANCIAL CONTRIBUTION**

9. In order to support the City in its project to restore the dams, the County agrees to provide funding in the amount of \$3 million, payable in accordance with the terms herein.
10. The County shall pay the City the sum of \$750,000.00 in four successive fiscal years beginning with fiscal year 2024.
11. The schedule of payments shall be as follows:
  - July 1, 2023 - \$750,000.00
  - July 1, 2024 - \$750,000.00
  - July 1, 2025 - \$750,000.00
  - July 1, 2026 - \$750,000.00
12. The City agrees that the funds contributed by County shall be restricted to use on the dam restoration project exclusively. The County's obligation to make the annual payments is contingent upon receipt of progress reports from the City which show satisfactory progress toward completion of the project. Any funds not used for the purposes stated shall be returned to the County. Any changes in the use of funds must be authorized in writing by the County prior to any expenditure of the funds by the City.

### **TERM OF AGREEMENT**

13. The initial term of this Agreement begins on September 1, 2022 the ("Effective Date") and continues in effect until August 31, 2026, unless earlier terminated pursuant to any of the terms and conditions contained herein.

### **TERMINATION**

14. County may terminate this Agreement upon thirty (30) calendar days' written notice to the City if City is in material breach of any provision herein and fails to cure the breach during the notice period.

### **NONAPPROPRIATION**

15. If the Board of County Commissioners does not appropriate the funding needed by the County to fulfill its financial obligations under this Agreement for a given fiscal year, County will not be obligated beyond the end of the last fiscal year for which funds were appropriated. In such event, County will promptly notify City of the non-appropriation, and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

### **RELATIONSHIP OF PARTIES**

16. Both County and City agree that this Agreement does not create a partnership, joint venture, other joint endeavor, joint ownership, joint operations, or personnel sharing of any kind. No joint personnel are needed by the parties in order to carry out the obligations under this Agreement.

### **REPRESENTATIONS**

17. Each party to this Agreement represents to the other party each of the following as of the Effective Date of this Agreement and covenants with the other party that each such representation will remain true and correct:
  - a. It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
  - b. No approval, authorization or consent of any other governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement;
  - c. It shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;

- d. It shall not violate any agreement with any third party by entering into or performing the obligations under this Agreement; and
- e. No elected or appointed official or employee has any interest (financial, employment or other) in the transactions contemplated by this Agreement.

#### **COMPLIANCE WITH E-VERIFY PROGRAM**

- 18. To the extent E-Verify rules apply to this Agreement, the parties agree to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

#### **GOVERNING LAW AND VENUE**

- 19. This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina, without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

#### **DISPUTE RESOLUTION**

- 20. Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

#### **GOVERNMENTAL IMMUNITY**

- 21. To the extent applicable, neither party waives its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

#### **NON-WAIVER**

- 22. Failure by County at any time to require the performance by City of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

#### **ENTIRE AGREEMENT**

- 23. This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

## HEADINGS

24. The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

## SEVERABILITY

25. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

## AMENDMENTS

26. No amendments or changes to this Agreement, or additional shall be valid unless in writing and executed in the same manner as the original.

## NOTICES

- a. **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- b. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- c. **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

- i. For the County: Brunswick County Manager  
P.O. Box 249  
Bolivia, NC 28422  
Fax: 910-253-2022
- ii. For the City: City Manager  
City of Boiling Spring Lakes  
9 East Boiling Spring Rd.  
Boiling Spring Lakes, NC 28461

## SIGNATURES

27. This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S. § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S. § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

\_\_\_\_\_  
Clerk to the Board

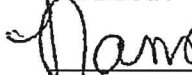
[SEAL]

BRUNSWICK COUNTY


By: \_\_\_\_\_  
Randy Thompson  
Chairman, Board of Commissioners

Date: \_\_\_\_\_

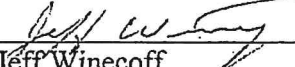
ATTEST:

  
\_\_\_\_\_  
City Clerk

[SEAL]



CITY OF BOILING SPRING LAKES

By:   
\_\_\_\_\_  
Jeff Winecoff  
Mayor

Date: 8/22/22

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

BRUNSWICK COUNTY

\_\_\_\_\_  
Aaron C. Smith, Director of Fiscal Operations

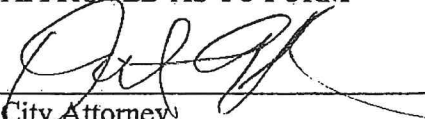
APPROVED AS TO FORM

\_\_\_\_\_  
Robert V. Shaver, Jr., County Attorney /  
Bryan W. Batton, Assistant County Attorney

CITY OF BOILING SPRING LAKES

  
\_\_\_\_\_  
Suzanne Turgate, Finance Officer

APPROVED AS TO FORM

  
\_\_\_\_\_  
City Attorney