

Resolution Authorizing the Execution of an Interlocal Agreement with the Town of Weaverville Regarding Stormwater and Erosion Control Inspections and Enforcement

WHEREAS, The County's Stormwater Ordinance has been applied and enforced by the County within the Town of Weaverville's municipal boundaries since 2007 and the Town wishes for the County to continue providing such services; and

WHEREAS, The proposed interlocal agreement (attached hereto as Exhibit A (the "Agreement")) would update, formalize, and more clearly define the parameters of the County's provision of stormwater and erosion control services for the Town without fundamentally changing the same; and

WHEREAS, Buncombe County is willing to continue enforcing its Erosion and Sedimentation Control Ordinances within the Town's municipal jurisdiction, subject to the terms and conditions set forth in the Agreement; and

WHEREAS, N.C. Gen. Stat. § 160A-461 authorizes any unit of local government in North Carolina and any one or more other units of local government in North Carolina to enter into contracts or agreements with each other in order to execute any undertaking.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That it hereby authorizes the execution of the Agreement.
2. That the Chair, Vice Chair, and County Manager, or any of them, or their designee, acting individually or collectively, are hereby authorized, empowered and directed to take all actions necessary or appropriate in the judgment of such officers to accomplish the purposes and intents of this Resolution, including the execution and delivery of the Agreement and all other documents, agreements, instruments, and/or certificates contemplated and/or made necessary by said Agreement.
3. That, by and with the consent of the County Legal Department, County staff is hereby instructed to proceed with this undertaking and all acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved, and confirmed.

4. That this resolution shall become effective upon its adoption.

This the 2nd of August, 2022.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

Lamar Joyner, Clerk

By: _____
Brownie Newman, Chair

APPROVED AS TO FORM

County Attorney



**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

**INTERGOVERNMENTAL AGREEMENT
BETWEEN BUNCOMBE COUNTY AND THE
TOWN OF WEAVERVILLE**

This **INTERGOVERNMENTAL AGREEMENT REGARDING STORMWATER REGULATIONS (POST-CONSTRUCTION SITE RUNOFF CONTROL) AND SOIL EROSION AND SEDIMENTATION CONTROL REGULATIONS (CONSTRUCTION SITE RUNOFF CONTROL)** is made and entered into this 1st day of July, 2022, by and between the County of Buncombe, a body politic and corporate, organized and existing under the laws of the State of North Carolina (hereinafter referred to as "County"), and the Town of Weaverville, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter referred to as "Town").

WHEREAS, cities and counties are authorized to enter into joint undertakings as authorized by NCGS §153A-445 and Ch. 160A, Art. 20, Part 1 Joint Exercise of Powers;

WHEREAS, management of stormwater is important to protect our water resources and public and private properties within the County and uniform and centralized enforcement efforts in the County and its municipalities will provide for consistent stormwater procedures throughout the County;

WHEREAS, on September 27, 2006, the County adopted an ordinance regulating stormwater, including specifically post-construction site runoff control regulations, and the same has, from time-to-time, been amended and is currently codified as Article VII of Chapter 26 of the Buncombe County Code of Ordinances and is commonly referred to as the "Stormwater Ordinance;"

WHEREAS, on May 21, 2007, the Weaverville Town Council voted to request that the County Stormwater Ordinance be applied and enforced by the County within the Town's municipal boundaries in accordance with G.S. § 153A-122;

WHEREAS, Buncombe County has the expertise and ability to enforce a post-construction site runoff control program within the Town and the Town wishes for the County to continue to provide these stormwater services within the Town's municipal jurisdiction;

WHEREAS, the County is a delegated authority by the State of North Carolina, and enforces the "[Sedimentation Pollution Control Act of 1973](#)" in all areas of the County, excluding the City of Asheville and where public monies are involved (i.e. DOT, Schools);

WHEREAS, on February 2, 1993, the County adopted an ordinance which implements the North Carolina Sedimentation Pollution Control Act of 1973, including soil erosion and sedimentation regulation related to construction site runoff, and the same has from time-to-time been amended and is currently codified as Article V of Chapter 26 of the Buncombe County Code of Ordinances and commonly referred to as the "Soil Erosion and Sedimentation Control Ordinance;"

WHEREAS, for decades the County has applied and enforced the County Soil Erosion and Sedimentation Control Ordinance within the Town's municipal boundaries in accordance with G.S. § 153A-122;

WHEREAS, Buncombe County has the expertise and ability to enforce a construction site runoff control program within the Town and the Town wishes for the County to continue to provide these services within the Town's municipal jurisdiction;

WHEREAS, this Agreement establishes each party's commitment to stormwater protection, construction site runoff controls, and post-construction site runoff controls;

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the parties hereby agree to the following:

REGULATIONS:

1. The Town of Weaverville restates its desire for the County's Stormwater Ordinance and Soil Erosion and Sedimentation Control Ordinance to be applicable to and enforced within the Town's municipal jurisdiction.
2. The Town of Weaverville acknowledges that it has not enacted any municipal stormwater regulations applicable to construction or post-construction activities.
3. The Town of Weaverville will take whatever actions that the parties deem necessary to formally adopt the County's Stormwater Ordinance and its post-construction site runoff control regulations.
4. The Town shall remain responsible for IDDE discharges within its jurisdiction and any inspection requirements as set out in its municipal separate storm sewer system (MS4) permit; provided, however, that all findings are to be shared with the County if related to stormwater permitting.
5. The Town will periodically review the County's regulations for compliance with all federal and state requirements applicable to construction and post-construction site runoff control for municipalities under an MS4 permit and will promptly notify the County of any action needed to comport with such requirements.
6. The County will promptly notify the Town when any of its stormwater regulations are amended.

ADMINISTRATION AND ENFORCEMENT:

1. The parties agree that Buncombe County will continue to enforce and administer the County's Stormwater and Soil Erosion and Sedimentation Control Ordinances within the municipal limits of the Town and to that end, the County will:
 - a. Review all applicable plans, reports, calculations, operation and maintenance agreements, engineer's certifications, and all permit application materials;
 - b. Collect of all permit fees related to the permitting process;
 - c. Issue stormwater permits;
 - d. Maintain all pertinent data related to the stormwater permits;
 - e. Include a link to the Town's stormwater web page on the County's website;

- f. Enforce the provisions of the Stormwater Ordinance and stormwater permits that have been issued, up to the fine-issuance level.
 - g. Make reasonable efforts to collect fines issued pursuant to the Ordinances. The County shall be entitled to keep and/or receive the portions of all fines collected that are not required by law to be remitted to the State or North Carolina or the school system
 - h. Investigate and take appropriate actions concerning complaints and violations;
 - i. Perform any administrative duties related to any of the foregoing.
 - j. Endeavor to enforce and administer the County's Stormwater and Soil Erosion and Sedimentation Control Ordinances within the municipal limits of the Town at the same level that it enforces said ordinances throughout the County, however, the County's resources are limited, and, in some cases, the County may not be able to administer and/or enforce said Ordinances to the full satisfaction of the Town. In the event that the Town believes that the County is not administering and/or enforcing said ordinances to the Town's satisfaction, it must promptly inform the County of the same in writing and the County must investigate and likewise promptly respond to the complaint in writing. The County's response should include a summary of the relevant facts, the actions taken to date, and what actions it plans to take in the future. If the County's administration and/or enforcement of said Ordinances in a specific case does not fully satisfy the Town, the Town may, at its own expense and without liability to the County, take over the enforcement and administration of that particular case. If the Town does take over the enforcement and administration of that particular case, the County agrees to share all information it has relevant to the matter. If the Town is not satisfied with the County's overall administration of the County's Stormwater and Soil Erosion and Sedimentation Control Ordinances within the municipal limits of the Town, the Town's sole remedy shall be the termination of this Agreement.
 - k. Manage appeals from the Ordinances and/or decisions related to the same, which shall be managed in the same way as appeals from properties in unincorporated Buncombe County.
 - l. Hear Variances from the Ordinances, which shall be heard in the same way as variances for properties in unincorporated Buncombe County.
2. The County is not obligated to:
- a. Administer or enforce any separate municipal stormwater regulations applicable to construction site runoff or post-construction site runoff that the Town may adopt.
 - b. Enforce more stringent requirements than those contained in its Ordinances.

3. The County's Stormwater Administrator shall be responsible for administration and enforcement of the stormwater regulations within the Town. The Stormwater Administrator and related staff shall have the authority to make decisions on the stormwater regulations within the Town's municipal limits.
4. The County's Erosion Control Officer shall be responsible for administration and enforcement of the sedimentation and erosion control regulations within the Town. The Erosion Control Officer and related staff shall have the authority to make decisions on the sedimentation and erosion control regulations within the Town's municipal limits.
5. In lieu of direct payment by the Town, the County shall retain all fees and fines collected to offset program costs. It is intended that the permit fees charged and retained by the County will cover the cost of administration and enforcement.
6. The County acknowledges that the Town must undergo annual self-audits and periodic NCDEQ field audits associated with its MS4 permit. The County agrees to cooperate in such process by providing all relevant information and data related to the post-construction site runoff control program for all audits and to provide representation at the NCDEQ field audits related to post-construction regulations and permitting; however, the County shall not be responsible for any penalties incurred by the Town whatsoever, including but not limited to any penalties imposed by the state of North Carolina, NCDEQ, the U.S. Government, and/or the EPA.
7. The County will be responsible for maintaining all data related to the stormwater permits issued within the Town's jurisdiction and any and all violations and enforcement activity related to the same (not including any enforcement actions by NCDEQ). Such data shall be made available to the Town upon request. The Town will be responsible for responding to a public record request directed towards the Town. The County will be responsible for providing the documents and/or data to the Town, who in turn will be responsible for distributing the information to the requestor.
8. The Town agrees to conduct Review Officer plat review through the County, to ensure plats subject to stormwater permit meet the requirements of the Stormwater Ordinance.

EFFECTIVE DATE: This Agreement shall become effective on July 1, 2022. This Agreement is in place of, supersedes, and replaces any existing Interlocal agreement or memorandum of understanding (MOU) on this subject, including specifically the MOU of July 2007.

TERM: The term of this Agreement shall be from July 1, 2022, to June 30, 2027.

AMENDMENTS: This Agreement may be amended only by approval of the Weaverville Town Council and the Buncombe County Board of Commissioners.


TERMINATION: Either party may terminate this MOU for any reason, or for no reason, upon 180 days' advance written notice to the other party. The Parties may also terminate this MOU at any time by mutual agreement.

MISCELLANEOUS:

1. **Notice.** Except as otherwise provided in this Agreement, all notices and communications required to be sent pursuant to the terms of this Agreement shall be in writing and shall be delivered by hand delivery, certified mail, return receipt requested, or by Federal Express or similar overnight courier service, addressed as follows: To Town: Selena Coffey, Town Manager, Town of Weaverville, P.O. Box 338, Weaverville, NC 28787. To County: Avril Pinder, County Manager, 200 College Street, STE 300, Asheville, NC 28801. All such notices and other communications, which are addressed as provided in this Paragraph, shall be effective upon receipt. The parties hereto may from time to time change their respective addresses for the purpose of notice to that party by a similar notice specifying a new address, but no such change shall be deemed to have been given until it is actually received by the party sought to be charged with its contents.
2. **Whole Agreement.** This Agreement contains all of the agreements and representations between the parties with respect to the subject matter hereof. None of the terms of this Agreement shall be waived or modified to any extent, except by written instrument signed and delivered by both parties.
3. **Severability/Survival.** If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect. The covenants contained in this Agreement, which by their terms require their performance after the expiration or termination of this Agreement, shall be enforceable notwithstanding the expiration or termination of this Agreement.
4. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of North Carolina.
5. **Duplicate Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
6. **Authority.** The individuals signing this Agreement personally warrant that they have the right and power to enter into this Agreement on behalf of Town and County, to grant the rights granted under this Agreement, and to undertake the obligations undertaken in this Agreement.
7. **Captions.** The captions or headings in this Agreement are inserted only as a matter of convenience and for reference and they in no way define, limit, or describe the scope of this Agreement or the intent of any provision hereof.
8. **Assignment.** This Agreement is expressly non-assignable without prior written consent and approval by the non-assigning party. This Agreement may not be continued by a successor to either party without the prior written consent of the other party.
9. **Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the Town and the County.

IN WITNESS WHEREOF, the parties hereto have caused this Intergovernmental Agreement to be executed in their respective names, the day and year first above written.

TOWN OF WEAVERVILLE

By: 
Patrick Fitzsimmons, Mayor
Date: 6/27/2022

COUNTY OF BUNCOMBE

By: _____
Brownie Newman, Chairman
Date: