

**Caroline County
Board of Supervisors Agenda
Executive Summary**

Meeting Date: **March 9, 2021**

Title: **New Business – Proposed Memorandum of Understanding
with Town of Bowling Green for Emergency Utility Repairs**

(Check Mark)

| | |
|---|--|
| <input type="checkbox"/> Consent | <input type="checkbox"/> Closed Meeting |
| <input checked="" type="checkbox"/> Action | <input type="checkbox"/> Public Hearing |
| <input type="checkbox"/> No Action (Information Only) | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> PowerPoint Presentation |

Summary: Attached is a proposed MOU for Emergency Mutual Aid and Assistance for Water and Wastewater Utilities between the County and the Town of Bowling Green for consideration by the Board of Supervisors. Additional information is contained in Mr. Schiebel’s memorandum. Mr. Schiebel will attend the March 9 Board meeting to answer any questions the Board may have about the agreement.

Budget Impact: Outlined in MOU

Action(s) Requested of Board: Approve agreement as presented

County of Caroline
Joseph C. Schiebel
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MEMORANDUM

TO: Charles M. Culley, Jr.
County Administrator

FROM: Joseph C. Schiebel
Director of Public Utilities

DATE: March 4, 2021

Regarding: **Proposed Emergency Mutual Aid and Assistance Agreement for Water and Wastewater Utilities with the Town of Bowling Green**

The Board of Supervisors previously approved the Emergency Mutual Aid and Assistance Agreement at their November 22, 2016 meeting. However, the Town of Bowling Green chose not to enter into that agreement at that time.

The new Town Mayor, Mark Gaines, requested a meeting to discuss the Emergency Mutual Aid Assistant Agreement. Staff from the County administration and utilities met with and discussed the proposed agreement.

The proposed agreement is to provide assistance to the Town only during emergencies. It specifies the circumstances under which the County will provide staffing, equipment, materials, and supplies to aid in the Town's water and wastewater systems' operations.

Critical factors in this agreement include that the County shall have the right to assess its utility situation to determine whether it is capable of assisting, and the County is under no obligation to assist the Town. The Town is under no obligation to call the County for assistance. Also, the County's personnel and equipment shall remain under the County's direct supervision and control.

The agreement provides that the Town shall reimburse the County for employees at their current pay rate, any overtime expenses incurred, and a 30% markup of employees' actual rate of pay to cover the full-load of the employee cost.

The County shall be reimbursed for all materials and supplies furnished and used while providing assistance to the Town, and fees for the use of County equipment shall be reimbursed according to a FEMA Schedule of Equipment Rates.

The Town shall pay a 5% administrative fee of the total of all costs to the County to cover miscellaneous expenses that are not reasonable to track.

I have attached the proposed Emergency Mutual Aid and Assistance Agreement for the Board's consideration.

**THE COUNTY OF CAROLINE
AND
THE TOWN OF BOWLING GREEN**

**Mutual and Assistance Agreement
for Water And Wastewater Utilities**

This **AGREEMENT**, dated the ____ day of _____, 2021, is entered into by and between the **COUNTY OF CAROLINE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as "Caroline"), and the **TOWN OF BOWLING GREEN, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia, (hereinafter referred to as "Bowling Green") (collectively, the "Parties") to set forth the terms and conditions under which CAROLINE will provide Mutual Aid and Assistance to BOWLING GREEN.

WHEREAS, BOWLING GREEN is located within CAROLINE and, as such, is bordered by and coterminous with CAROLINE at all points along its boundary; and

WHEREAS, BOWLING GREEN owns and operates a public water and wastewater system within the Town of Bowling Green (the "Bowling Green Water and Wastewater System"); and

WHEREAS, BOWLING GREEN desires to contract with CAROLINE to provide Mutual Aid and Assistance to the Bowling Green Water and Wastewater System; and

WHEREAS, CAROLINE has agreed with BOWLING GREEN to provide Mutual Aid and Assistance to the Bowling Green Water and Wastewater System by providing staffing, equipment; materials and supplies; and

WHEREAS, CAROLINE and BOWLING GREEN desire to enter into this Agreement to provide for the terms under which CAROLINE will provide Mutual Aid and Assistance to the Bowling Green Water and Wastewater System and BOWLING GREEN will pay for the same; and

NOW, THEREFORE, in consideration of the premises, the mutual benefits to be derived by the parties to this Agreement by entering into this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows;

I. EMERGENCY REPAIR SERVICE

1. **Rights.** CAROLINE shall have the right to assess its utilities situation to determine whether it is capable of providing assistance. CAROLINE shall not be under any obligation to provide assistance to BOWLING GREEN, nor shall BOWLING GREEN be under any obligation to call CAROLINE for assistance. The personnel and equipment of CAROLINE shall remain, at all times, under the direct supervision and control of the designated supervisory personnel of CAROLINE. In the event that CAROLINE provides assistance to BOWLING GREEN, no part of any work performed by CAROLINE shall be subcontracted.

2. **Reimbursable Expenses.** BOWLING GREEN shall pay CAROLINE for Mutual Aid and Assistance to the Bowling Green Water and Wastewater System during the term of this Agreement as follows. CAROLINE shall document and maintain personnel time records, a log of equipment, materials, and supplies furnished. The reimbursable expenses paid to CAROLINE for Mutual Aid and Assistance shall include the following;

A. Personnel - When providing Mutual Aid and Assistance to BOWLING GREEN, CAROLINE shall pay its employees according to their current rate of pay. BOWLING GREEN shall reimburse CAROLINE for all direct and indirect payroll cost and

expenses incurred during the Period of Assistance, including any overtime. CAROLINE shall include a 30% markup of employee's actual rate of pay to cover employee pensions, benefits, FICA, Hospital - Medical Insurance, Group Life Insurance, Disability Insurance, Unemployment Insurance, and Workers' Compensation Insurance.

B. Equipment – CAROLINE shall be reimbursed for the use of its equipment during the Period of Assistance according to the most current Schedule of Equipment Rates as listed by FEMA . See Exhibit 1 (current rates). Rates for equipment not referenced in the FEMA Schedule of Equipment Rates or on Exhibit 1 shall be developed based on actual recovery costs.

C. Materials and Supplies – CAROLINE shall be reimbursed for all materials and supplies furnished by it and used during the Period of Assistance. The measure of reimbursement shall be the replacement cost of the materials and supplies used. In the alternative, the parties may agree that BOWLING GREEN will replace, with like kind and quality as determined by CAROLINE, the materials, and supplies used.

D. Administrative Fee – BOWLING GREEN shall pay a five percent (5%) administrative fee of the total of all such cost to CAROLINE to cover miscellaneous expenses that are not reasonable to track.

3. **Payment.** CAROLINE shall bill BOWLING GREEN for all expenses no later than thirty (30) days following the Period of Assistance. BOWLING GREEN shall pay CAROLINE the full amount no later than thirty (30) days following the bill date. Unpaid bills shall become delinquent forty (40) days following the bill date, and once delinquent shall be charged a ten percent (10%) penalty every thirty (30) days until paid.

II. GENERAL PROVISIONS

1. **Term.** This Agreement shall become effective upon execution and shall remain in effect through and including December 31, 2026 (the "Initial Term"). This Agreement shall continue in force following the expiration of the Initial Term for additional terms of five (5) years each until terminated by either The Town Manager of BOWLING GREEN or the County Administrator of CAROLINE, giving the other party thirty (30) days written notice to that effect.

2. **Termination for Breach.** CAROLINE and BOWLING GREEN each shall be entitled to terminate this Agreement in its entirety upon a material breach by the other of any of its obligations hereunder. Prior to exercising such right of termination, however, the acting party shall provide the party alleged to be in breach with written notice of such breach and a reasonable time under the circumstances, but in any event not to exceed thirty (30) days, to cure such breach. Nonpayment of any amount due to CAROLINE from BOWLING GREEN under this Agreement as and when due shall be deemed to be a material breach of this Agreement. CAROLINE and BOWLING GREEN may mutually agree to an extension of this thirty-day time period in circumstances where the breach cannot reasonably be cured within thirty days, and the parties agree upon a plan of action and a schedule to cure such breach.

3. **Termination for Convenience.** Anything in this Agreement to the contrary notwithstanding, either party shall be entitled to terminate this Agreement in its entirety at any time; provided, however, that prior to exercising such right of termination, five (5) days advance notice for termination in all cases except for termination for breach which is governed by Part II, paragraph 2 of this Agreement is provided by the terminating party. CAROLINE shall be entitled to any and all reasonably-incurred charges, whether direct or indirect for emergency

repairs to the Bowling Green Water and Wastewater System that have been expended to that date.

4. **Means of Notices.** Whenever notice is required or permitted from one party to the other, it shall be given in writing and shall be effected by hand delivery, overnight courier service or by mailing by certified first class mail, return receipt requested, to the party whom given as follows:

If to Bowling Green:

Town Manager, Town of Bowling Green
Post Office Box 468
Bowling Green, Virginia 22427

with a copy to Town Attorney at the same address;

If to Caroline:

County Administrator, Caroline County
P.O. Box 447
Bowling Green, Virginia 22427;

with a copy to County Attorney at the same address;

or to such other persons or addresses as may hereafter be designated by notice given pursuant to this paragraph, in writing by one party to the other. Notice by hand delivery shall be deemed effective when delivered, notice by mail shall be deemed effective as of five (5) business days after the date it is deposited in the mail, certified first class postage prepaid, and notice by

overnight courier shall be deemed effective on the first business day after being deposited with such courier, fees prepaid. In case of any emergency or urgent circumstances, notice shall be given by the fastest possible means, and the provisions of this paragraph do not apply; provided, however, that notice of material defaults and termination shall be effective only if given in writing, delivered as prescribed in this paragraph.

5. **No-Waiver Clause.** The failure of either BOWLING GREEN or CAROLINE to exercise, or the delay by either of them in exercising, any right under this Agreement in the event of default by the other shall not be deemed to be and shall not constitute a waiver with respect to any subsequent default.

6. **Force Majeure.** If, by reason of force majeure, either party hereto shall be rendered unable, in whole or in part, to carry out its obligations under this Agreement, and if such party shall give notice and full details in writing of such force majeure to the other party within a reasonable time after the occurrence of the event or cause relied on, then the obligations of the party giving such notice, so far as it is affected by such force majeure shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

7. **Definition of Force Majeure.** The term "force majeure", as employed herein, shall mean acts of public enemy, orders of any kind of the government of the United States, the Commonwealth of Virginia, changes in any law or regulation making performance of obligation(s) herein impossible to perform, or any civil or military authority, insurrections, riots, arrests, civil disturbances, labor unrest or strikes, machinery failure, inability to obtain any necessary supplies, utilities or services, earthquakes, floods, fires, storms and any serious weather-related casualty.

8. **Governing Law.** This Agreement is made and intended to be performed in the Commonwealth of Virginia, and shall be interpreted and construed in accordance with the laws of that state. Jurisdiction and venue for all legal actions involving this Agreement shall lie in the Circuit Court of Caroline County, Virginia, and all such proceedings shall be brought only in such court.

9. **Ownership Rights.** Nothing in this Agreement shall be construed to convey to CAROLINE any ownership interest in the Bowling Green Water and Wastewater System. CAROLINE shall have no right to assign, sell, transfer or convey to any other person or entity any or all of the Bowling Green Water and Wastewater System under this Agreement.

10. **Authority to Enter into Agreement.** BOWLING GREEN and CAROLINE each represents and warrants for itself as follows as of the date of this Agreement:

(a) It has the power to enter into this Agreement and the transactions contemplated hereunder and to perform the obligations hereunder according to the terms of this Agreement.

(b) It has duly taken all actions and obtained all consents necessary to enable it to enter into this Agreement.

(c) The person or persons executing or attesting the execution of this Agreement on behalf of each party has or have been duly authorized and empowered to so execute and attest.

(d) The execution of this Agreement on behalf of the party shall bind and obligate the party to the extent provided by the terms hereof.

(e) There exists no litigation pending or threatened against either party that, if determined adversely, would materially and adversely affect the ability of the party to

carry out its obligations under this Agreement or the transactions contemplated hereunder.

11. **Default and Cure.** Except as otherwise set forth herein, in the event either party fails to comply with a deadline set forth hereunder or otherwise is in breach of its obligations or in default hereunder, the party that has failed to comply with such deadline or that otherwise is in breach or default shall cure such breach or default within thirty (30) days of receiving written notice of such breach or default from the party not in default, or if such breach or default is not capable of being cured within such thirty (30) days, and the breaching party commences good faith efforts to cure such breach or default within such time, then such breaching party shall have such additional time as is reasonably necessary to effect such cure, or any such longer period to which the parties may agree in writing.

12. **Liability and Damages.** BOWLING GREEN shall pay and/or reimburse CAROLINE for all damages, cost of defense (including attorney fees and costs) fines, penalties and other amounts incurred by CAROLINE resulting from any liabilities, claims, actions, causes of action, suits, damages, costs and expenses, arising out of, in connection with, or as a result of, this Agreement and the services provided by CAROLINE to BOWLING GREEN hereunder, except for those that are proximately caused by the gross negligence or willful misconduct of CAROLINE, its employees and agents. In the event legal action is necessary to resolve whether the gross negligence or willful misconduct of CAROLINE, its employees and agents was the proximate cause, the prevailing party in such action shall be entitled to recover and collect all costs, including, but not limited to, reasonable attorney fees and court costs, associated with the action from the non-prevailing party. Anything herein to the contrary notwithstanding, CAROLINE shall have no liability to BOWLING GREEN or any other person or entity for any lack of water or wastewater in the Bowling Green Water and Wastewater System,

failure of the BOWLING GREEN System or any event related to the Bowling Green Water and Wastewater System, except as may be expressly set forth in this Agreement.

13. **No Third Party Beneficiaries.** This Agreement is between and entered into only for the benefit of the Parties. There are no third party beneficiaries of or to this Agreement and no person or entity other than one of the Parties shall be entitled to maintain any legal action against one or both of the Parties.

14. **No Presumption Against Drafter.** This Agreement has been drafted through a cooperative effort of both parties, and neither party shall be considered the drafter of this Agreement so as to give rise to any presumption or convention regarding construction of this document.

15. **Attorney Fees.** In the event legal action is necessary to enforce any provision of this Agreement, including, but not limited to any payment provision, whether such action is a law, in equity or otherwise, the prevailing party in such action shall be entitled, in addition to any other rights or remedies available to it, to collect from the non-prevailing party the reasonable attorney fees and court costs.

16. **Entire Agreement.** This Agreement contains the entire understanding and agreement of the parties with respect to the subjects hereof, and no amendment or modification shall be binding unless in writing and signed by all parties hereto.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, BOWLING GREEN and CAROLINE have caused this Agreement to be executed by their duly authorized officers, as of the day, month and year first set forth above.

THE TOWN OF BOWLING GREEN, VIRGINIA

By:

Mayor

COMMONWEALTH OF VIRGINIA,

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,

2016 by _____, in his/her capacity as _____ of BOWLING GREEN.

Notary Public

Notary Identification Number

My commission expires:

COUNTY OF CAROLINE, VIRGINIA

By:

Chairman, Board of Supervisors

COMMONWEALTH OF VIRGINIA,

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2016, by _____, in his capacity as Chairman of the Board of Supervisors of Caroline
County, Virginia.

Notary Public

Notary Identification Number

My commission expires:

APPROVED AS TO FORM:

County Attorney