

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

Meeting Date: **March 9, 2021**

Title: **New Business – MOU with Town of Bowling Green for
COVID-19 Municipal Utility Relief Program Implementation**

(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 Memorandum of Understanding between Caroline County and the Town of Bowling Green to collaborate on the implementation of a COVID-19 Utility Relief Program to help provide direct assistance to utility customers in the Town with overdue bills in accordance with the rules of the Coronavirus Relief Fund. Under the agreement, the County agrees to act as the Town’s fiscal agent for the limited purpose of this program as required by the Virginia Department of Housing and Community Development.

The County shall transfer funds to the Town promptly upon receipt of such funds from the Virginia Department of Accounts. The MOU shall remain in effect through June 30, 2021. Any unspent funds shall be returned to the Commonwealth of Virginia.

Budget Impact: N/A

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

**MEMORANDUM OF UNDERSTANDING FOR
COVID-19 MUNICIPAL UTILITY RELIEF PROGRAM IMPLEMENTATION**

THIS MEMORANDUM OF UNDERSTANDING FOR COVID-19 MUNICIPAL UTILITY RELIEF PROGRAM IMPLEMENTATION (this “Memorandum”) is made and entered into the ____ day of December, 2020, by and between the **COUNTY OF CAROLINE, VIRGINIA** (the “Locality”), and the **TOWN OF BOWLING GREEN, VIRGINIA** (the “Town”) (each a “Party” and jointly the “Parties”).

RECITALS

A. Federal CARES Act Funds. In response to the COVID-19 pandemic disaster, the United States federal government enacted the Coronavirus Aid, Relief, and Economic Securities Act of 2020 (“CARES Act”) to provide funding for numerous programs to address the COVID-19 pandemic disaster, including \$150 billion in assistance to states, local, territorial, and tribal governments for direct impacts of the COVID-19 pandemic disaster through the establishment of the Coronavirus Relief Fund (“CRF”). The Commonwealth of Virginia received approximately \$3.1 billion as its share.

B. Federally Authorized Uses. Section 5001 of the CARES Act provides that the CRF may be used by state and local governments to cover costs that: (i) are necessary expenditures incurred due the public health emergency with respect to COVID-19; (ii) were not accounted for in the budget most recently approved as of March 27, 2020 for the Locality (except as may be permitted by the CRF guidelines established by the United States Department of the Treasury); and (iii) were incurred during the period that begins March 1, 2020, and ends on December 30, 2020.

C. Virginia’s Utility Relief Program. Consistent with the CARES Act, in November 2020 the General Assembly passed and Governor Northam signed into law the 2020 Special Session I Amendments to the 2020 Appropriation Act. Item 479.10 of this legislation appropriates \$100 million from the Commonwealth’s CARES Act CRF allocation to establish a COVID-19 Utility Relief Program (“Program”) and help provide direct assistance to utility customers with accounts over 30 days in arrears.

D. Town’s CRF Award. As a water and/or wastewater service provider and eligible “municipal utility” within the meaning of the Program, the Town has applied to the State Corporation Commission (“SCC”) for a suballocation of the appropriated funds for the purpose of providing direct assistance to its customers in accordance with applicable federal and state laws, regulations and guidance (“CRF Rules”). The SCC and/or the Virginia Department of Housing and Community Development (“DHCD”) has issued an award letter to Town (Exhibit A hereto) committing to funding assistance for eligible customers of the Town in a specified amount (“Town CRF Funds”).

E. Local Implementation. The Locality and the Town desire to collaborate for the timely, effective and efficient implementation of the Program and provision of assistance to their eligible utility customers in accordance with the CRF Rules. The DHCD is responsible for assisting

the SCC in the implementation of the Program and passing along awarded CRF funding to municipal utilities. On November 24, 2020, DHCD issued a guidance memorandum providing additional information on the COVID-19 Municipal Utility Relief Program (“DHCD Guidance”), which requires that the award to the Town be disbursed through a partnering city or county serving as the fiscal agent with the Virginia Department of Accounts (“DOA”). The Locality is willing to serve as the required fiscal agent to facilitate assistance to eligible customers experiencing economic hardship due to the COVID-19 pandemic.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth in this Memorandum, including the recitals set forth above which are a material part of this Memorandum, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Fiscal Agent. The Locality agrees to act as the Town’s fiscal agent as required by DHCD for the limited purpose of this Program.
2. Joint Certification. The Locality, in its capacity as fiscal agent, agrees to make the certification required by DHCD substantially in the form as shown in Exhibit B hereto (or any modification thereto made by DHCD and found to be agreeable by the Locality).
3. Funds Pass-Through. The Locality agrees to transfer the Town CRF Funds to the Town promptly upon the Locality’s receipt of such funds from DOA.
4. Compliance and Recordkeeping by Town. The Town agrees to comply with all applicable CRF Rules and maintain records of its expenditures of the Town CRF Funds for a period of five years and provide the Locality with copies of such records at no expense upon its request.
5. Repayment and Indemnification by Town. If the United States or the Commonwealth lawfully requires repayment of some or all of the Town CRF Funds, the Town agrees to repay such amount to the Locality (or directly to the United States or the Commonwealth as applicable) for such purpose within twenty (20) days of any such requirement. In addition, Town agrees to indemnify and hold the Locality harmless from any liability to the United States or the Commonwealth resulting from any act or omission of the Town in its administration of the Town CRF Funds, including as a result of any violation by the Town of the CRF Rules. In the event that any suit or proceeding is brought against the Locality by the United States or the Commonwealth, the Town, upon notice given to it by the Locality, will pay all costs of defending the Locality in any such action or other proceeding, including attorney’s fees. In the event of any settlement or any final judgment being awarded against the Locality, either independently or jointly with the Town, the Town will pay such settlement or judgment in full, pay all costs and expenses thereof, and hold the Locality harmless therefrom. The Town shall bear no responsibility for the acts or omissions of the Locality or its officers or employees.
6. Return of Unexpended Town CRF Funds. If all of the Town CRF Funds are not expended to assist utility customers by any applicable deadline under the Program such that Town is obligated to return unexpended funds to the Commonwealth, the Town and the Locality shall

coordinate to accomplish the return of such funds in a timely manner in accordance with the CRF Rules.

7. Acknowledgment of Required Information. In accordance with the DHCD Guidance and related federal requirements for pass-through entities (2 C.F.R. §200.332), Town hereby acknowledges receipt of Exhibit C hereto and the additional information set forth therein.

8. Further Cooperation. The Parties shall continue to cooperate with each other as reasonably necessary to confirm or bring about the transfers contemplated by this Agreement.

9. Term. This Memorandum shall be in effect from the date on which it is executed by the Parties through June 30, 2021.

10. Governing Law; Severability. This Agreement shall be construed in accordance with and governed for all purposes by the laws of the Commonwealth of Virginia. If any word or provision of this Agreement as applied to any Party or to any circumstance is adjudged by a court to be invalid or unenforceable, the same shall in no way affect any other circumstance or the validity or enforceability of any other word or provision.

11. Entire Agreement; Amendments. This Agreement contains the entire integrated agreement between the Parties as to the subject matter hereof and supersedes all previous written and oral negotiations, commitments, proposals and writings. No amendments may be made to this Agreement except by a writing signed by both Parties.

12. Counterparts; Signatures; Copies. This Agreement may be executed in counterparts, both of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or scanned signature may substitute for and have the same legal effect as an original signature. Any copy of this executed Agreement made by photocopy, facsimile or scanner shall be considered the original for all purposes.

13. Authorization. Each Party represents that its execution, delivery and performance under this Agreement have been duly authorized by all necessary action on its behalf, and do not and will not violate any provision of its charter or enabling legislation or result in a material breach of or constitute a material default under any agreement, indenture, or instrument of which it is a party or by which it or its properties may be bound or affected.

*[The remainder of this page is intentionally left blank.
Signatures appear on the following page.]*

IN WITNESS WHEREOF, the Parties hereto have caused the execution of this Memorandum of Understanding as of the date first written above.

TOWN OF BOWLING GREEN

By: Melissa Lewis (SEAL)
Melissa Lewis
Town Manager

COUNTY OF CAROLINE, VIRGIINIA

By: _____ (SEAL)
Charles M. Culley, Jr.
County Administrator

Director of Finance
Caroline County

Approved as to form:

County Attorney

[END OF SIGNATURES]

**MEMORANDUM OF UNDERSTANDING
FOR MUNICIPAL UTILITY RELIEF PROGRAM IMPLEMENTATION**

EXHIBIT A

CRF Award Letter

**MEMORANDUM OF UNDERSTANDING
FOR MUNICIPAL UTILITY RELIEF PROGRAM IMPLEMENTATION**

EXHIBIT B

DHCD Joint Certification Form

**MEMORANDUM OF UNDERSTANDING
FOR MUNICIPAL UTILITY RELIEF PROGRAM IMPLEMENTATION BETWEEN**

EXHIBIT C

Pass-Through Information Requirements

The following pass-through information requirements pertaining the subaward to Town (i.e., the Locality's transfer of the Town CRF Funds) are set forth below in satisfaction of 2 C.F.R. §200.332 and as directed by the DHCD Guidance. The Federal Award Identification for funds (subaward) addressed by this Memorandum is the Federal Coronavirus Aid, Relief and Economic Security Act (CARES Act) / Coronavirus Relief Fund.

- (i) Subrecipient's Name: Town of Bowling Green
- (ii) Subrecipient's Unique Entity Identifier: 090607081
- (iii) Federal Award Identification Number: CFDA 21.019 – Coronavirus Relief Funds
- (iv) Federal Award Date: December 7, 2020
- (v) Subaward Period of Performance Start and End Date:
Start Date is Date of this Memorandum; January 29, 2021
- (vi) Subaward Budget Period Start and End Date:
Start Date is Date of this Memorandum; End Date is January 29, 2021
- (vii) Amount of Federal Funds Obligated by this Action by the Pass-Through Entity to the Subrecipient: \$4,154.69
- (viii) Total Amount of Federal Funds Obligated to the Subrecipient by the Pass-Through Entity Including the Current Financial Obligation: \$4,154.69
- (ix) Total Amount of the Federal Award Committed to the Subrecipient by the Pass-Through Entity: \$ 4,154.69
- (x) Federal Award Project Description, as Required to be Responsive to the Federal Funding Accountability and Transparency Act (FFATA): Coronavirus Relief Fund: Municipal Utility Relief Program to Assist Customers
- (xi) (A) Name of Federal Awarding Agency: U.S. Treasury Department
(B) Name of Pass-Through Entity: Caroline County
(C) Contact Information for Awarding Official of the Pass-Through Entity:
Charles M. Culley, Jr., County Administrator

- (xii) Assistance Listings Number and Title (the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement):
CFDA Number and Title: 21.09, Coronavirus Relief Funds

- (xiii) Identification of Whether the Award is R&D
Not R&D Award

- (xiv) Indirect Cost rate for the Federal Award (including if the de minimis rate is charged) per §200.414:
N/A (no indirect costs can be charged by county/city or municipal utility)



Ralph S. Northam
Governor

R. Brian Ball
Secretary of
Commerce and Trade

COMMONWEALTH of VIRGINIA

Erik C. Johnston
Director

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

December 7, 2020

VIA EMAIL

Melissa Lewis
Interim Town Manager
Town of Bowling Green

Re: Award Letter, Guidance, and Required Certification for COVID-19 Municipal Utility Relief Program to Assist Customers

Dear Melissa Lewis:

On behalf of Governor Northam, it gives me great pleasure to inform you that Town of Bowling Green has been awarded federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) funds pursuant to the Appropriation Act mandated State Corporation Commission application process in the amount of \$4,154.69 to assist with municipal utility customer relief for all eligible customers of Town of Bowling Green. This funding is being provided under CFDA 21.019 – Coronavirus Relief Funds (CRF). Additional details concerning this program including guidance, requirements, and several model forms are included in the following pages.

Additional guidance concerning this program has been included with this letter, including a model customer intake form. Please read this carefully before proceeding with additional steps. Given the tight timeline for utilization of these funds and to ensure each utility directly receives these funds in an expedited manner you must return the attached certification in partnership with a city or county that will act as the fiscal agent to receive the funds from the Department of Accounts (DOA) and the city or county will then forward funds to the municipal utility to implement the program for the utility's customers. Once the project is complete, DOA will follow up regarding project outcomes and compliance. I want to reiterate that it is incumbent on Town of Bowling Green and the partnering city or county to ensure project expenses are properly documented and verified in case of audit.

For questions contact DHCD staff member David Conmy at utility@dhcd.virginia.gov.

Sincerely,

A handwritten signature in black ink that reads 'Erik C. Johnston'.

Erik Johnston
Director, Virginia Department of Housing and Community Development

CC: David Von Moll, Comptroller, Department of Accounts
Encl: COVID-19 Municipal Utility Relief Program Guidance, Certification Form and Addendum, and Model Customer Intake Form

Certification:

CERTIFICATION for RECEIPT of CORONAVIRUS RELIEF FUND PAYMENTS

by

Caroline County

on behalf of

Town of Bowling Green

We, the undersigned, represent **Caroline County** and are working in partnership with **The Town of Bowling Green** (the utility), and we certify that:

1. The intent is for this allocation to pass through the county or city directly to the municipal utility to serve all eligible Virginia municipal utility customers. The customer utility relief program operator should develop a sub agreement with the county or city fiscal agent that ensures they will be responsible for compliance with state and federal law.
2. We have the authority to request direct payment, on behalf of the utility from the Commonwealth of Virginia, of revenues from the Coronavirus Relief Fund (CRF) pursuant to section 601(b) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, div. A, Title V (Mar. 27, 2020).
3. We understand that the Commonwealth of Virginia will rely on this certification as a material representation in making a direct payment to the city or county.
4. The city or county and municipal utility's proposed uses of the funds received as direct payment from the Commonwealth of Virginia under section 601(b) of the Social Security Act will be used only to cover those costs that:
 - a. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
 - b. were not accounted for in the budget most recently approved as of March 27, 2020, for the utility; and
 - c. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.
5. Any funds that are not expended or that will not be expended on necessary expenditures incurred before December 30, 2020, by the municipal utility or its grantee(s), must be returned to Commonwealth of Virginia no later than January 29, 2021, and that the Commonwealth of Virginia is entitled to invoke State Aid Intercept to recover any such unexpended funds.
6. We understand that customer attestations of the COVID-19 economic hardship must be obtained and saved by the utility relief program before forgiving arrearages.
7. We understand that the municipal utility will not receive continued funding beyond

December 30, 2020, from any source to continue paying expenses or providing services that were initiated or previously supported from CRF funds prior to December 30, 2020.

8. Funds received as a direct payment from the Commonwealth of Virginia pursuant to this certification must adhere to official federal guidance issued or to be issued regarding what constitutes a necessary expenditure.
9. Up to five percent of funds allocated to individual localities may be used for direct administrative costs to support management of the utility relief programs.
10. Any CRF funds expended by the municipal utility or its grantee(s) in any manner that does not adhere to official federal guidance or COVID-19 Municipal Utility Relief Program guidance shall be returned to the Commonwealth of Virginia within 30 days of a finding that the expenditure is disallowed, and that the Commonwealth of Virginia is entitled to invoke State Aid Intercept on the city or county serving as fiscal agent to the partner municipal utility system to recover any and all such funds that are not repaid within 30 days of a finding that the expenditure is disallowed.
11. As a condition of receiving the CRF funds pursuant to this certification, the city or county on behalf of the municipal utility system shall retain documentation of all uses of the funds, including but not limited to payroll time records, invoices, direct administrative costs, and/or sales receipts. Such documentation shall be produced to the Commonwealth of Virginia upon request.
12. The city or county on behalf of the municipal utility system must maintain proper accounting records to segregate these expenditures from those supported by other fund sources and that all such records will be subject to audit.
13. Any funds provided pursuant to this certification cannot be used as a revenue replacement for lower than expected revenue collections from taxes, fees, or any other revenue source.
14. Fund payments may not be used for government revenue replacement, including the replacement of unpaid municipal utility fees.
15. Any CRF funds received pursuant to this certification will not be used for expenditures for which the municipal utility and its subrecipients have received funds from any other emergency COVID-19 supplemental funding (whether state, federal, or private in nature) for that same expense nor may CRF funds be used for purposes of matching other federal funds unless specifically authorized by federal statute, regulation, or guideline.

We certify that we have read the above certification and our statements contained herein are true and correct to the best of our knowledge.

City or County Chief Administrative Officer (CAO)	Authorized Official Representing Municipal Utility Allocated Funds by SCC
Name of City or County: Caroline County	Name of Municipal Utility: Town of Bowling Green
Printed Name of CAO: Charles M. Culley, Jr.	Printed Name of Municipal Utility Official: Melissa Lewis
Signature: 	Signature: 
Title: County Administrator	Title: Interim Town Manager
Date: 12/17/2020	Date: December 7, 2020

Please provide city/county DUNS number: 052150158

Please provide municipal utility DUNS number: 090607081

Certification Addendum

(Please update the yellow highlighted fields as it pertains to your circumstances)

Federal Requirements for information to be included in agreement between county/city and municipal utility

§200.332 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

(1) Federal award identification. (Federal Coronavirus Aid, Relief and Economic Security Act (CARES ACT, Coronavirus Relief Fund))

(i) Subrecipient name (which must match the name associated with its unique entity identifier);
Town of Bowling Green

(ii) Subrecipient's unique entity identifier;

90607081081

(iii) Subaward Period of Performance Start and End Date;
March 1, 2020 to December 30, 2020

(iv) Subaward Budget Period Start and End Date;
July 1, 2020

(v) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;

\$4,154.69

(vi) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation; \$4,154.69

(vii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
\$4,154.69

(viii) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA); (Coronavirus Relief Fund: Municipal Utility Relief Program to Assist Customers)

(ix) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;

Federal awarding agency: U.S Department of Treasury

Pass-through entity: Caroline County

Contact: Charles Culley, County Administrator

(x) Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement; (CFDA Number and Title are 21.09, Coronavirus Relief Funds)

(xi) Identification of whether the award is R&D; and (This is not R&D award)

(xii) Indirect cost rate for the Federal award (including if the de minimis rate is charged) per §200.414. (No indirect costs can be charged by county/city or municipal utility)