



101 W. First Street
Lowell, North Carolina 28098

Phone: 704-824-3518
www.lowellinc.com

Tuesday, March 5, 2024, 6:30 PM
City Hall
101 W. First Street
Lowell, North Carolina 28098

1: Call to Order

- 1A. Call to Order
- 1B. Determination of Quorum
- 1C. Pledge of Allegiance
- 1D. Changes to and Approval of Agenda

2: Approval of Minutes

3: Old Business

4: New Business

4A. Update to Interlocal Agreement for Enforcement Services of Gaston County Soil and Erosion and Sediment Control Ordinance

The City of Lowell has an interlocal agreement with Gaston County Natural Resources for enforcement of soil erosion and sediment control on active construction sites. The updated agreement contains language that clarifies the scope of the services provided by GCNR.

4B. Update to Interlocal Agreement for Enforcement Services of the Gaston County Stormwater Ordinance

The City of Lowell has an interlocal agreement with Gaston County Natural Resources for enforcement of stormwater control and best management practices on active construction sites. The updated agreement contains language that clarifies the scope of the services provided by GCNR.

5: Adjournment

Date Posted: March 5, 2024

**NORTH CAROLINA
GASTON COUNTY**

**INTERLOCAL AGREEMENT FOR ENFORCEMENT SERVICES OF THE GASTON
COUNTY SOIL EROSION AND SEDIMENT CONTROL ORDINANCE**

This Agreement made and entered into on the 12th day of March, 2024, by and between **GASTON COUNTY** a corporate and political body and a subdivision of the State of North Carolina, hereafter referred to as "County", and the City of Lowell, NC, a municipal corporation having a charter granted by the State of North Carolina, hereinafter referred to as "Municipality".

WITNESSETH:

WHEREAS, Article 20 of Chapter 160A of the North Carolina General Statutes authorizes the contractual exercise by one unit of local government for one or more other units of any administrative or governmental power, function, public enterprise, right, privilege, or immunity of local government; and,

WHEREAS, Article 6 of Chapter 153A of the North Carolina General Statutes authorizes the governing board of any City to permit any ordinance adopted by a County to be applicable within the City; and,

WHEREAS, the Municipality has requested that the County provide enforcement services within the corporate boundaries of the Municipality for the Gaston County Soil Erosion and Sedimentation Control Ordinance; and,

WHEREAS, pursuant to N.C. Gen Stat. Chapter 160A, Article 20 upon official request of the governing body of any municipality within the County, the Gaston County Board of Commissioners may by agreement exercise enforcement powers within said municipality and upon such direction may do so until such time as the Municipal governing body officially withdraws its request; and,

WHEREAS, the Gaston County Board of Commissioners upon approval of a resolution, and with written notice, may withdraw the offering of the service to the Municipality.

WHEREAS, the Lowell, NC, City Council upon approval of a resolution, and with written notice, may withdraw the offering of the service from the County.

NOW, THEREFORE, it is agreed by the parties hereto that the County through the Gaston County Department of Natural Resources will provide enforcement services for Gaston County Soil Erosion and Sedimentation Control Ordinance in the corporate limits of the Municipality on the terms and conditions set forth below:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions for the Municipality to contract with the County for enforcement services for Gaston County Soil Erosion and Sedimentation Control Ordinance inside its corporate limits and to confer to the

County the necessary geographical and subject matter jurisdiction to carry out the intent of this Agreement.

2. Term. The term of this Agreement is March 12, 2024, through June 30, 2025. This Agreement shall automatically renew each year hereafter for successive one-year terms unless terminated as provided herein.

3. Responsibilities.

A. Municipality. The Municipality agrees to:

- (1) adopt County Fee Schedule with regards to Erosion and Sedimentation Control items;
- (2) allow the County to retain any fees or fines collected in accordance with the adopted schedule and in accordance with the law;
- (3) perform a preliminary submittal review before allowing plans to be submitted to County. Preliminary review will be to ensure items of concern to the Municipality or otherwise regulated by Municipal Ordinance (example: Driveway, tree save, etc.) are addressed prior to issuance of permit.
- (4) any erosion control measures that are added as part of conditions from a Conditional Rezoning, that are outside of the scope of the adopted Gaston County Soil Erosion and Sediment Control Ordinance will be the sole responsibility of the Municipality to enforce and maintain.
- (5) defend all claims against it and its employees for incidents related to the enforcement activities to be conducted pursuant to this Agreement that occur prior to the date of this Agreement and indemnify and hold the County harmless from any judgments against it and said employees. The County agrees to defend all claims against the Municipality arising out of like incidents that occur from and after the date of this Agreement, and further agrees to indemnify and hold the Municipality harmless from any judgments against the Municipality resulting therefrom, unless the claims or liability arise solely from the actions of the Municipality;

B. County. The County through the County Department of Natural Resources agrees to:

- (1) review plans submitted pursuant to the Gaston County Soil Erosion and Sediment Control Ordinance for compliance therewith and issue permits for those plans found to be in compliance.
- (2) ensure that all construction activities disturbing one acre or more and are

subject to the scope of the Gaston County Soil Erosion and Sediment Control Ordinance, obtain an NCDEQ required NCG01 Permit for the construction activity. During scheduled erosion control inspections, monitor project site for NCG01 Permit compliance and report reoccurring non-compliance issues to NCDEQ and Municipality.

- (3) provide adequate enforcement staff to be able to effectively enforce the Gaston County Soil Erosion and Sedimentation Control Ordinance within the Municipality's corporate limits; this includes responding to citizen and municipal complaints within a 48-hour window of time from the receipt of the complaint;
- (4) seek civil and criminal enforcement of the law when necessary in the County's discretion.

4. Geographic and Subject Matter Jurisdiction. To the fullest extent permitted by the laws of the State of North Carolina and the United States, the Municipality hereby grants to the County the authority to enforce the Gaston County Soil Erosion and Sedimentation Control Ordinance as it now exists, or may be amended from time to time, and the County accepts the authority herein granted and agrees fully and faithfully to perform the duties and responsibilities implied by the acceptance of this grant subject to the terms and conditions of this Agreement.

5. Amendment. This Agreement may only be amended in writing upon the signature of both parties. No oral agreements or resolutions shall have any effect.

6. Entire Agreement. This Agreement is the only agreement between the parties and contains all the terms agreed upon and replaces any previous agreements regarding the subject matter. This Agreement has no effect upon enforcement of codes or ordinances not specifically mentioned. If any part of this Agreement is held invalid such decision shall not render the document invalid.

7. Governing Law & Forum:

This Agreement shall be deemed to have been made in the State of North Carolina, and its validity, construction and effect shall be governed by the laws of the State of North Carolina. The parties hereto agree that any action brought by either party to enforce the terms of this Agreement shall be filed in the Superior Court of Gaston County, State of North Carolina.

Dispute Resolution. In addition to and prior to litigation, the parties shall endeavor to settle disputes first by negotiation between the parties, and, if negotiation is unsuccessful, then by non-binding mediation. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or

limitations. Each party hereto submits to the exclusive jurisdiction in the state and federal courts having jurisdiction in Gaston County, North Carolina and irrevocably waives any defenses to such venue including any defense based upon the principles of forum non conveniens.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate for themselves for their duly authorized officers of the day and year first above written.

GASTON COUNTY

By: _____
County Manager

ATTEST:

Clerk to the Board

APPROVED AS TO FORM:

County Attorney

(CITY OF LOWELL, NC)

By: _____
Mayor Larry Simonds

ATTEST:

Clerk Cheryl Ramsey

File: IntlocAgreeSoilEros&SedContOrd.mw

**NORTH CAROLINA
GASTON COUNTY**

**INTERLOCAL AGREEMENT FOR ENFORCEMENT SERVICES
OF THE GASTON COUNTY STORMWATER ORDINANCE**

This agreement made and entered into on the 12th day of March, 2024, by and between **GASTON COUNTY**, a corporate and political body and a subdivision of the State of North Carolina, hereinafter referred to as “County”, and the City of Lowell, NC, a municipal corporation having a charter granted by the State of North Carolina, hereinafter referred to as “Municipality”.

WITNESSETH:

WHEREAS, Article 20 of Chapter 160A of the North Carolina General Statutes authorizes the contractual exercise by one unit of local government for one or more other units of any administrative or governmental power, function, public enterprise, right, privilege, or immunity of local government; and

WHEREAS, Article 6 of Chapter 153A of the North Carolina General Statutes authorizes the governing board of any City to permit any ordinance adopted by a County to be applicable within the City; and,

WHEREAS, the Municipality has requested that the County provide plan review and permitting within the corporate boundaries of the Municipality for the post-construction portion of the Gaston County Stormwater Ordinance; and

WHEREAS, pursuant to N.C. General Statute Chapter 160A, Article 20, upon official request of the governing body of any municipality within the County, the Gaston County Board of Commissioners may through agreement exercise enforcement powers within said municipality and upon such direction may do so until such time as the Municipal governing body officially withdraws its request; and

WHEREAS, the Gaston County Board of Commissioners, upon approval of a resolution, and with written notice, may withdraw the offering of the services to the Municipality.

WHEREAS, the Lowell, NC, City Council, upon approval of a resolution, and with written notice, may withdraw the offering of the services from the County.

NOW THEREFORE, it is agreed by the parties hereto that the County through the Gaston County Department of Natural Resources will provide plan review and permitting for post-construction stormwater portion of the Gaston County Stormwater Ordinance in the corporate limits of the Municipality on the terms and conditions set forth below:

- 1. Purpose.** The purpose of this Agreement is to set forth the terms and conditions for the Municipality to contract with the County for plan review, permitting, and enforcement services for the Gaston County Stormwater Ordinance inside its corporate limits and to confer to the County the necessary geographical and subject matter jurisdiction to carry out the intent of this Agreement.
- 2. Term.** The term of this Agreement is March 12, 2024, through June 30, 2025. This Agreement shall automatically renew each year thereafter for successive one (1) year terms unless terminated as provided herein.

3. Responsibilities.

A. **Municipality.** The Municipality agrees to:

- (1) adopt the County Fee Schedule with regards to Stormwater items;
- (2) allow the County to retain any plan review and Permitting fees for Post-Construction Stormwater per the County Fees Schedule;
- (3) defend all claims against it and its employees for incidents that occur prior to the date of this Agreement and indemnify and hold the County harmless from any judgements against it and said employees. The County agrees to defend all claims against the Municipality arising out of like incidents that occur from and after the date of this Agreement and further agrees to indemnify and hold the Municipality harmless from any judgements against the Municipality resulting therefrom, unless the claims or liability arise solely from the actions of the Municipality.
- (4) withhold applicable permits and approvals, including but not limited to zoning permits and final plat approvals, until notified of compliance with the Stormwater Ordinance;
- (5) obtain performance surety bonds on all proposed Stormwater Control Measures. These bonds shall be held until all final documentation for completed Stormwater Control Measures have been received by the County;
- (6) any Stormwater Control measures that are added as part of conditions from a conditional rezoning, that are outside of the scope of the adopted Gaston County Stormwater Ordinance will be the sole responsibility of the municipality to enforce;
- (7) administer the Municipality's Stormwater Management Program including programs addressing the Six Minimum Measures of the Municipality's NPDES MS4 Permit;
 - a) Public Involvement and Participation,
 - b) Public Education and Outreach,
 - c) Construction Site Runoff: County is responsible for plan review, permitting, inspection, and enforcement of Soil Erosion & Sedimentation Control Ordinance on all land disturbance activities (minor / major subdivisions and single lot permits) via the respective Soil Erosion & Sedimentation Control Ordinance Interlocal Agreement.
 - d) Post-Construction Site Runoff: County is responsible for only the responsibilities listed below in Part 3.B of this Interlocal Agreement. The Municipality is responsible for all remaining NPDES MS4 Permit Post-Construction Runoff requirements.
 - e) Illicit Discharge Detection and Elimination,
 - f) Good Housekeeping Pollution Prevention
 - g) any applicable Total Maximum Daily Load (TMDLs) requirements

B. **County.** The County, through the Gaston County Department of Natural Resources, agrees to:

- (1) review plans submitted pursuant to the Gaston County Stormwater Ordinance for compliance therewith and issue permits for those plans found to be in compliance;
 - a. coordinate with Municipality on final review of plan submittals to verify acceptance of proposed proprietary Stormwater Control Measure(s) by Municipality.
- (2) inspect construction sites, and monitor Stormwater Control Measure(s) to completion of construction, to determine compliance with approved and permitted stormwater management plans;
- (3) notify Municipality of any violations of the Stormwater Ordinance during, and to the completion of, the construction process and the final design engineer certification;
- (4) collect all final Stormwater Control Measure(s) documentation; As part of this process, Gaston County will coordinate with Municipality for the release of any bonds for such infrastructure;
- (5) convey all final Stormwater Control Measure(s) documentation as outlined in the Gaston County Stormwater Control Measure Close Out Report to Municipality for record keeping and the Municipality's continuing enforcement of the post-construction portion of the Stormwater Management Ordinance per the Municipality's NPDES MS4 Permit;
- (6) Seek Civil and Criminal enforcement of the law in the mutual discretion of the County and the Municipality.

4. **Geographic and Subject Matter Jurisdiction.** To the fullest extent permitted by the laws of the State of North Carolina and the United States, the Municipality hereby grants to the County the authority to perform the herein described services and, to that extent, to enforce the County Stormwater Management Ordinance as it now exists, or may be amended from time to time, and the County accepts the authority herein granted and agrees fully and faithfully to perform the duties and responsibilities implied by the acceptance of this grant subject to the terms and conditions of this agreement.

5. **Amendment.** This Agreement may only be amended in writing upon the signature of both parties. No oral agreements or resolutions shall have any effect.

6. **Entire Agreement.** This Agreement is the only agreement between the parties, contains all the terms agreed upon, and replaces any previous agreements regarding the subject matter. This Agreement has no effect upon enforcement of codes or ordinances not specifically mentioned. If any part of this Agreement is held invalid, such decision shall not render the document invalid.

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agree that any action brought by either party to enforce the terms of this Agreement shall be filed in the Superior Court of Gaston County, State of North Carolina.

Dispute Resolution. In addition to and prior to litigation, the parties shall endeavor to settle disputes first by negotiation between the parties, and, if negotiation is unsuccessful, then by non-binding mediation. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations. Each party hereto submits to the exclusive jurisdiction in the state and federal courts having jurisdiction in Gaston County, North Carolina and irrevocably waives any defenses to such venue including any defense based upon the principles of forum non conveniens.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate for themselves for their duly authorized officers of the day and year first above written.

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