



RESOLUTION TITLE: TO APPROVE AN INTERLOCAL AGREEMENT BETWEEN GASTON COUNTY AND THE CITY OF BESSEMER CITY FOR THE AMERICAN RESCUE PLAN ACT (ARPA) FUNDED TRYON ELEMENTARY WATER LINE PROJECT

WHEREAS, pursuant to N.C.G.S. §160A-461, any unit of local government in the State of North Carolina and any one or more other units of local government may enter into contracts or agreements with each other in order to execute any undertaking; and,

WHEREAS, in May 2021, Gaston County was awarded \$43,612,126 in federal grant funds to meet urgent community needs in the wake of COVID-19. On April 26, 2022, Resolution 2022-141 approved and appropriated funds for the Tryon Elementary Waterline Extension (hereinafter, referred to as the "Project"). On April 26, 2022, Resolution 2022-144 authorized the execution of a professional services contract for the design of the Project; and,

WHEREAS, Gaston County and the City of Bessemer City desire to jointly extend City water infrastructure to serve Tryon Elementary School, Tryon Park, Tryon Recycling Center, and property owners along the construction route, collectively the Tryon Community. The Tryon Community is currently served by groundwater wells or community well systems; and,

WHEREAS, the cost of the Project is to be funded by the County using the secured grant funds and available local funds to cover any remaining costs; and,

WHEREAS, the purpose of the interlocal agreement between the County and the City Bessemer City is to set forth the terms and conditions, as described therein, under which the County will construct, and the City of Bessemer City, through an operating agreement, will operate and maintain the water infrastructure and comply with US Treasury Terms and Conditions of Program Income requirements through the end of the period of performance; and,

WHEREAS, upon the end of the grant's performance period, the County will transfer ownership of the Project to Bessemer City as part of its municipal water system. Bessemer City is responsible for meeting all Federal, State, and Local requirements for operating and maintaining the Project.

NOW, THEREFORE, BE IT RESOLVED that the Gaston County Board of Commissioners, pursuant to N.C.G.S. §160A-461, hereby approves the attached interlocal agreement (Exhibit A), incorporated herein by reference, between Gaston County and the City of Bessemer City for the American Rescue Plan Act (ARPA) funded Tryon Elementary Water Line Project, and authorizes the County Manager, or Designee, to Execute such Agreement.

DO NOT TYPE BELOW THIS LINE

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	CBrown	CCloninger	AFrale	BHovis	KJohnson	TKeigher	RWorley	Vote
2024-119	03/26/2024	BH	KJ	A	A	AB	A	A	A	A	U

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NORTH CAROLINA

GASTON COUNTY

INTERLOCAL AGREEMENT FOR CONSTRUCTION OF
WATER INFRASTRUCTURE

This Agreement, made and entered into this the ____ day of _____, 2024 by and between Gaston County, a body politic and corporate, and a political subdivision of the State of North Carolina (hereinafter referred to as the "County") and the City of Bessemer City, a North Carolina municipal corporation (hereinafter referred to as the "City").

WITNESSETH:

WHEREAS, Tryon Elementary School, Tryon Park, and Tryon Recycling Center (hereinafter referred to as the "Tryon Community") is currently served by groundwater well or community well systems extracting drinking water from the groundwater table; and,

WHEREAS, past droughts and mining activities in the area have resulted in a shortage of sufficient drinking water; and,

WHEREAS, the City through its Utilities Department has available water system capacity to support Tryon Community's critical water need; and,

WHEREAS, pursuant to N.C.G.S. §§ 153A-164 and 160A-461, units of local government are authorized to enter into interlocal agreements for any undertaking; and,

WHEREAS, the City and County desire to jointly extend Bessemer water infrastructure to serve the Tryon Community (hereinafter referred to as the "Project"); and,

WHEREAS, the County has been awarded Coronavirus State and Local Fiscal Recovery Funds established in S.L. 2021-180 as part of the American Rescue Plan Act (hereinafter referred to as the "Grant") to provide funding to cover a portion of the costs of the Project as set forth herein; and,

WHEREAS, the County has agreed to provide gap funds as available to cover the remainder of the costs of the Project as set forth herein or alter or cancel the Project if sufficient funding is not available; and,

WHEREAS, the County has agreed to construct or let for construction the Project pursuant to all applicable State, Federal, and local rules and regulations; and,

WHEREAS, the project must be completed during the Grant's period of performance; and,

WHEREAS, the period of performance is defined as the total time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods; and,

WHEREAS, per the Grant Award Terms and Conditions, the period of performance for this Grant ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipients using award funds must obligate eligible costs prior to December 31, 2024; and,

WHEREAS, upon Project completion and acceptance, City will assume operation and maintenance of the Project from County through an operating agreement and comply with US Treasury Terms and Conditions of Program Income requirements through the end of the period of performance; and,

WHEREAS, upon the end of the period of performance of the Grant, the County will transfer ownership of Project to City as a part of its municipal water system. City is responsible for meeting all Federal, State, and Local requirements for operating and maintaining Project.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained herein, it is agreed between the parties hereto as follows:

1. **PURPOSE:** The purpose of this Agreement is to set forth the terms and conditions under which County will construct, and City will operate and maintain the water infrastructure described herein.
2. **PROJECT DESCRIPTION:** The scope of work includes construction of approximately 28,090 LF of waterline and related appurtenances to serve the Tryon Community. This new infrastructure will connect to the existing City infrastructure and terminate at Tryon Park.
3. **PLANS AND SPECIFICATIONS:** The infrastructure shall be engineered, designed, and constructed in accordance with the specifications of the City. City shall have the right to review and inspect all engineering, design, and construction to ensure all work meets said specifications. City shall not be obligated to accept or maintain the Project if any portion thereof fails to meet their specifications. The engineering and surveying work is to be completed by the County or such other engineer as County shall select, at no cost to the City. Upon completion of the Project, County shall provide the City a set of as-built drawings.
4. **CONSTRUCTION OF THE PROJECT:** The County agrees to construct or let a contract for the construction of the Project in accordance with all applicable federal, state, and local laws, regulations, and ordinances. County agrees to contract with a professional construction engineer and inspections firm during construction. City agrees to coordinate independent inspections of the waterline construction. Upon project completion, the City shall operate and maintain the waterline infrastructure as part of the City water system.
5. **PROJECT COSTS:** The cost of the Project is to be funded by the County using the secured Grant funds and available local funds to cover any remaining costs. During construction, the County will install a tap for property owners that make such request within a reasonable amount of notice in order to do so, as determined by the County. The deadline for notice shall be prior to letting of a construction contract and additional requests made after that cut-off date may not be accommodated. If allowable, City agrees to waive tap fees for those customers that receive a County installed tap during the Project. In addition to installing taps requested, the County will also make efforts to assist property owners with the cost of installing a water service line to their home

or business. Costs unilaterally incurred by the City shall not be included in Project costs covered by the County (e.g., City inspections, consultant costs, etc.).

The referenced Grant and local funds shall be applied to the costs of construction of the Project. In the event the referenced Grant and local funds are not secured, and suitable replacement funding is not secured, the Project shall not proceed, and this Agreement shall terminate. In the event there are not sufficient Grant and local funds to cover the bid on the contract for the construction, of the Project for the estimated amount or less and the parties are unable to agree on a mutually satisfactory arrangement to cover the costs, the Project shall not proceed, and this Agreement shall terminate.

In anticipation of the extension of the water system and in preparation for the construction of the Project, the County has procured Armstrong Glen PC (hereinafter referred to as "Engineer") to provide professional services for the Project.

The County shall act as lead agency and project manager for the construction of the Project and in the administration of all Grant and local match funds.

All Grant funding shall be administered by the County in accordance with the rules, laws, regulations, terms, and directives of the administering agencies that are applicable to or govern the Grant set forth above.

6. PROGRAM INCOME OBLIGATIONS:

DEFINITION: Program Income refers to gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f). Program income includes but is not limited to income from fees for services charged to new customers, or increased user fees for current customers due specifically to the Project. Program income also includes the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, and principal and interest on loans made with Federal award funds. Program income does not include special assessments, tax revenues, system development fees, availability fees, regulatory fees, contractual charges for infrastructure, charges to other local governments to reserve capacity, and penalty charges.

The City shall provide the County with an estimate of Program Income that they expect to generate during the period of performance, based on the total potential customer connections and expected project completion date. This estimate must be provided in order for the County to obligate these expected funds prior to 12/31/2024. The City understands that the estimated and obligated program income does not determine the amount of funds available for use during the period of performance and instead, determines the maximum amount of funds available for reconciliation and use during the period of performance. The City understands that any program income received beyond the amount obligated prior to 12/31/2024, will be paid to the Treasury.

REPORTING AND DOCUMENTATION: The County and City shall maintain accurate records of all program income generated, including the source, amount, dates of receipt, and use of funds. The City will report program income to the County, with supporting documentation, on a monthly basis.

USE OF PROGRAM INCOME: The City shall establish appropriate accounting procedures to track and retain program income in a special revenue fund separate from other operating revenue. The County will work to reconcile and appropriate program income on a quarterly basis. Provided that appropriate documentation has been submitted by the City, reconciliation will then require approval from the County's Commission. Once approval is received, the County will notify the City of the amount of program income that is authorized for use from its special revenue fund. All unreconciled program income must remain in the special revenue fund until authorization for use has been granted. Any unreconciled program income remaining after the period of performance will be paid to the Treasury. There is no further obligation to track and report program income after the period of performance.

COMPLIANCE AND AUDITING: The County and the City shall comply with all program income requirements imposed by the granting agency, including reporting, recordkeeping, and use of funds. Failure to comply with program income requirements may result in penalties or the need for repayment of funds to the granting agency. Any current regulations or updates from Treasury after the effective date of this Agreement, shall supersede any conflicting provisions found herein.

RETENTION AND ACCESS OF RECORDS: Records shall be maintained for a period of five (5) years following the end of the grant's period of performance. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) in order to conduct audits or other investigations. The City shall make available to the County, all reports and documentation related to program income to ensure compliance with the Federal Award.

7. PROPERTY MANAGEMENT:

Any purchase of equipment or real property with grant funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations

8. OPERATION, MAINTENANCE AND EXTENSIONS: Upon project completion, City shall operate and maintain the same as part of its municipal system per the terms agreed to in the operating agreement. Upon the end of the period of performance, all rights, title, and interest in Project, including, but not limited to, utility infrastructure, easements, and rights of way, shall be transferred to City and City shall operate and maintain the same as part of its municipal system from that point forward.

City shall not deny connection to the Project by a potential customer requesting service so long as City has sufficient water capacity to support new customers in the Project area and the customer otherwise complies with City requirements, including the requirement to petition for voluntary annexation in exchange for receiving City services. No service tap or connections shall be made to Project except under the supervision and inspection of the City and upon payment by the property owner to the City of required water connection charges and availability fees of the City and County. By execution of this Agreement, City acknowledges its continuing obligation to provide services to the specified Project area upon customer compliance with all City requirements.

WARRANTY: The City shall be covered by any warranties provided by manufacturers or suppliers of components or materials, as well as workmanship as outlined in the construction contract. In the event of defects or deficiencies discovered during the warranty period, the City shall promptly notify the County in writing of such defects or deficiencies.

9. RIGHTS OF WAY: County shall be responsible for the acquisition and creation of all easements, rights of way, and encroachment agreements and permits necessary for the construction of the Project. The costs of such acquisition shall be paid out of the Project funds provided by the County as set forth above. The City agrees to provide easements and/or rights of way across any City owned property, to the extent necessary for building the Project. Conveyances of easements and rights of way shall be in a form acceptable to the County and the costs for preparation, surveying, recording and related costs shall be paid by the County.
10. LEAD AGENCY: The County shall serve as the lead agency for the Project and shall commence and complete the Project within a reasonable time after the execution of this Agreement, subject to securing the necessary funds. The schedule for the Project shall be established by the County. Project dates shall be specified in the construction contract entered into between the County and the contractor(s) engaged to construct the Project. Completion of the Project in accordance with the contract schedule is contingent upon weather and/or other factors that might necessitate a delay in the construction schedule provided for in said construction contract.
11. ACCESS: City shall have the right to inspect and approve documents, materials, papers, and other related items at any point in the Project, with proper notification to County. Further, City shall have access, at all times, to the construction site for the purpose of construction observation. City shall have the right to notify County of any construction that does not meet City specifications or the engineering and design of the Project. Upon receipt of such notification County shall take every step necessary to ensure the construction of the Project meets City specifications.
12. INSURANCE AND INDEMNITY: During construction, County shall provide the public liability insurance coverage and, to the extent permitted by North Carolina law, indemnify the City against any and all damages to persons or property that may be incurred through injury or accident by reason of the County's negligent construction Project.

After project acceptance and execution of the operating agreement, and during the period of performance of the Grant which shall end 12/31/2026, City shall maintain and operate the system, provide the public liability insurance coverage and, to the extent permitted by North Carolina law, indemnify the County against any and all damages that may be incurred through injury or accident by reason of the City's negligent operation of Project. City shall name County as an additional insured.
13. SERVICE CHARGES: Upon completion and acceptance of the Project, the City shall thereafter have the sole and exclusive right to charge and collect for water service furnished to any consumer; and the County shall have no right or interest therein with the exception of managing the Program Income requirements set forth.

14. SERVICE PROVIDERS: City shall be the exclusive provider of water services within the water service area of this project.
15. NO JOINT AGENCY ESTABLISHED: No joint agency is to be established as a result of the execution of this Interlocal Agreement, and each party shall manage its own personnel, respectively, as necessary for the execution of this undertaking.
16. DUPLICATE ORIGINALS: This Agreement shall be executed by the parties hereto in duplicate originals, each of which when executed shall constitute one and the same Agreement.
17. INVALID TERMS: Should any one or more of the provisions contained in this Agreement be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby, and this Agreement shall otherwise remain in full force and effect. If any such provision is held to be invalid or unenforceable, then upon the request of either party, the City, and the County shall attempt in good faith to negotiate and agree upon a replacement provision.
18. COUNTERPARTS: This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original.
19. NOTICES: Any notices required or permitted in this Agreement, including address changes, shall be made in writing and shall be made either by mailing registered or certified mail, return receipt requested, and postage prepaid, to the other party at the address shown herein for that party or at such different address for that party, notice of which has been properly given hereunder, or by personally delivering such notice to an officer or other party. The notice, if mailed as provided for herein, shall be deemed given on the day of receipt or refusal to accept receipt, and if personally delivered, on the date of delivery. The addresses are as follows:

TO THE COUNTY: Ray Maxwell P.O. Box 1578 Gastonia, NC 28053	TO THE CITY OF BESSEMER CITY: NAME: ADDRESS: ADDRESS:
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20. ENTIRE AGREEMENT: This instrument contains the entire Agreement between the parties, and no statement, oral or written, made by either party or agent of either party that is not contained in this Agreement shall be valid or binding. This contract may not be enlarged, modified, or altered, except in writing signed by the parties and endorsed hereon.
21. AMENDMENT OR TERMINATION: This Agreement may be amended or terminated only by an instrument in writing executed by all parties hereto.
22. REMEDIES IN THE EVENT OF DEFAULT: In the event of Default by a party to this Agreement, the other party may exercise all legal and equitable remedies to which it is entitled.

23. **WAIVER:** No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.
24. **BINDING NATURE AND ASSIGNMENT:** This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party. Any assignment attempted without the written consent of the other party shall be void.
25. **GOVERNING LAW AND JURISDICTION:** North Carolina law shall govern the interpretation and enforcement of this Agreement, and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles). All legal actions or other proceeding relating to this Agreement shall be brought in a court sitting in Gaston County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Gaston County, North Carolina.
26. **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. If non-binding mediation fails, disputes shall be resolved in Gaston County Superior Court.
27. **TITLES OF SECTIONS:** The section headings inserted herein are for convenience only and are not intended to be used as an aid to interpretation and are not binding on the parties.
28. **NO DOCTRINE OF CONSTRUCTION AGAINST THE DRAFTER:** All parties acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted and reviewed by Counsel for all parties. As such, the doctrine of construction against the drafter shall have no application to this Agreement.
29. **FORCE MAJEURE:** Neither party to this Agreement shall be liable for any claims or damages if such claims or damages result or arise out of a failure or delay that is due to any act beyond the control of the party.

IN WITNESS WHEREOF, the undersigned municipal corporations and governmental entities have caused this Agreement to be executed on their behalf by their duly authorized representatives, having hereunto affixed their signatures and seals, the day and year first above written.

CITY OF BESSEMER CITY

By: _____ (seal)
City Manager

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

STATE OF NORTH CAROLINA
COUNTY OF GASTON

I, _____, a Notary Public of the aforesaid County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that he/she is the **Clerk of the City of Bessemer City** and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name by its **City Manager**, sealed with its corporate seal and attested by him/her as its Clerk.

WITNESS my hand and Notarial Seal, this the ____ day of _____, 2024.

Notary Public

My Commission Expires: _____

GASTON COUNTY

By: _____ (seal)

County Manager or Designee

ATTEST:

APPROVED AS TO FORM:

Clerk to the Board

County Attorney

This document has been pre-audited in the manner required by the Local government Budget and Fiscal Control Act

Finance Director/Deputy Finance Director

STATE OF NORTH CAROLINA
COUNTY OF GASTON

I, _____, a Notary Public of the aforesaid County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that he/she is **the (Deputy) County Manager/Assistant County Manager** and that by authority duly given as the act of the municipal corporation, the foregoing instrument was signed in its name by the designated party, sealed with its corporate seal and attested by him/her as its (Deputy) County Clerk.

WITNESS my hand and Notarial Seal, this the ____ day of _____, 2024.

Notary Public

My Commission Expires: _____



Gaston County

Gaston County
Board of Commissioners
www.gastongov.com

Public Works

Board Action

File #: 24-108

Commissioner Hovis - Public Works - To Authorize the County Manager, or Her Designee, to Execute an Interlocal Agreement Between Gaston County and the City of Bessemer City for the American Rescue Plan Act (ARPA) Funded Tryon Elementary Water Line Project

STAFF CONTACT

Daniel K. Ziehm, P.E. - Public Works Director - 704-862-6795

BUDGET IMPACT

No additional County funds.

BUDGET ORDINANCE IMPACT

N/A

BACKGROUND

In May 2021, Gaston County was awarded \$43,612,126 in federal funds to meet urgent community needs in the wake of COVID-19. On April 26, 2022, Resolution 2022-141 approved and appropriated funds for the Tryon Elementary Water Line Extension. On April 26, 2022, Resolution 2022-144 authorized the execution of a professional services contract for the design of the waterline infrastructure.

Section 160A-461 of the North Carolina General Statutes authorized units of local government to enter into interlocal agreements for any undertaking. Gaston County and the City of Bessemer City desire to jointly extend City water infrastructure to serve Tryon Elementary School, Tryon Park, Tryon Recycling Center, and property owners along the construction route, collectively the Tryon Community. The Tryon Community is currently served by groundwater wells or community well systems.

The purpose of the interlocal agreement between the County and the City of Bessemer City is to set forth the terms and conditions under which the County will construct, and the City of Bessemer City will operate and maintain the water infrastructure.

POLICY IMPACT

N/A

ATTACHMENTS

Resolution; Interlocal Agreement

DO NOT TYPE BELOW THIS LINE

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	CBrown	CCloninger	AFraley	BHovis	KJohnson	TKeigher	RWorley	Vote
2024-119	03/26/2024	BH	KJ	A	A	AB	A	A	A	A	U

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