

## **Notes for Draft Memorandum of Understanding Between County with Program and Town/City Without Program**

### **Disclaimer**

This draft model memorandum of understanding is provided here for reference and example purposes only. It does not constitute a legal document or the provision of legal advice or guidance. For this document to be valid and legally enforceable it must be reviewed and modified as necessary, and approved, by the governing board of a county or town, while under the guidance of county or town attorneys or other respective legal counsel.

### **General Notes**

A Memorandum of Understanding is recommended for the purpose of allowing one local government to administer a Voluntary Agricultural District Program (VAD) or Enhanced Voluntary Agricultural District program (EVAD) on behalf of another local government. The MOU may be a more suitable legal instrument than a Memorandum of Agreement (MOA) as there is no exchange of consideration in the MOU between local governments regarding a VAD or EVAD program and there are no penalties that would be applied to either party for withdrawing from the MOU or failing to comply with the terms. This draft model MOU is a non-fund obligating document.

### **Purpose**

North Carolina General Statutes sections 160A-460 through 466 comprise the Interlocal Cooperation Act, which give local governments the authority to “enter into contracts or agreements with each other in order to execute any undertaking.” These are ratified by resolution of the governing board of each party to the agreement or memorandum. Approval and ratification is to be recorded in the meeting minutes of each governing body. Municipalities also have their own authority under N.C. Gen. Stat. § 160A-10 (9) to make or enter into contracts or agreements as do counties under N.C. Gen. Stat. § 153A-11.

The basic purpose of this draft model MOU is to allow one local government, typically a county, to administer a VAD or EVAD program within the corporate boundaries of a municipality. There is not a need for an MOU, or other type of memorandum, if a town is administering its own EVAD or VAD Program, if there are no farms within the corporate boundaries of a municipality, or the municipality has adopted the county VAD or EVAD ordinances into its own code of ordinances either in their entirety or by reference. However, an MOU would be needed if the municipality desires the county to take operational responsibility for its program.

Of concern are only farms within a municipality’s **corporate boundaries** if any of the previously noted conditions do not apply. Farms within a town or municipality’s ETJ can still be within a

county VAD or EVAD program and under those circumstances an MOU or other device is not necessary to allow these operations to be part of the county program.

**Statement of Mutual Benefit and Interests**

VAD or EVAD ordinances may contain statements within their ordinances that say a farm cannot be within a municipality’s corporate boundaries to qualify for enrollment in either type of program. These ordinances can be amended to allow a farm within the corporate boundaries to be enrolled in a VAD or EVAD program should a county with a program enter into an MOU with a city – or should the city adopt a county’s ordinance. Such a provision may be written like the following to allow a farm to be in a program:

“Be located in the unincorporated area of \_\_\_\_\_ County, except that the County may operate a program in an incorporated area of a municipality under agreement with that municipality.”

However, an amendment to the county VAD or EVAD ordinance is not necessarily required where the MOU explicitly states that the county is exercising municipal authority. Amending the county ordinance to allow for account for such an agreement is, however, better practice.

**Responsibilities: Appointment**

The municipality can recommend for appointment to the advisory board any individual as an *ex officio* member. A logical appointee would be someone who is currently a member of a municipal planning board. This type of appointment offers two advantages. First, it provides information regarding municipal land use planning and regulation from the planning board to the advisory board and vice versa. Secondly, it allows the municipality and the county to coordinate land use planning and the development and enforcement of land use regulations around agriculture, forestry, and horticultural land uses.

**Responsibilities: Termination**

The parties to the agreement may mutually establish any period of time that is suitable for providing written notice to withdraw from the agreement. In this model 60 days is provided for example purposes.

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