

**TOWN OF WINDSOR, COUNTY OF BROOME, STATE OF NEW YORK  
RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT WITH WHITE  
BIRCH LAKE PROPERTY OWNERS' ASSOCIATION FOR SPONSORSHIP OF DAM  
REPAIR GRANT APPLICATION RESOLUTION #31-2025**

**PRESENT:** Supervisor Timothy Harting  
Deputy Supervisor Eric Beavers  
Council Member Gary M. Hupman  
Council Member Mark Odell  
Council Member Daniel Colwell

**Offered By:**  
**Seconded By:**

**WHEREAS**, the White Birch Lake Dam, an approximately 21-foot earthen dam located within the Town of Windsor, is classified by the New York State Department of Environmental Conservation (NYSDEC) as an “Intermediate Hazard Dam” due to its potential to impact downstream infrastructure, including New York State Route 79, in the event of failure; and

**WHEREAS**, the White Birch Lake Property Owners Association (the “Association”) owns and is responsible for the dam, and is seeking to undertake structural repairs to mitigate safety risks and preserve public infrastructure and private property; and

**WHEREAS**, the Association has applied for grant funding through the New York State Water Quality Improvement Program (WQIP), but is ineligible to apply directly due to its tax-exempt status under Internal Revenue Code § 501(c)(7), and therefore seeks the Town’s assistance as a public sponsor; and

**WHEREAS**, the Town’s role as sponsor is strictly limited to grant submission and administrative functions, and the Association has agreed to deposit the full required municipal cost-share into an escrow account to ensure that the project is fully funded at no cost to the Town; and

**WHEREAS**, the proposed Agreement between the Town and the Association includes indemnification, insurance, claw back protections, and a full waiver and release of all claims against the Town in connection with its sponsorship role; and

**WHEREAS**, the Town has verified that the Association is a duly formed New York not-for-profit corporation, with its Certificate of Incorporation recorded in the Broome County Clerk’s Office under Instrument No. 201000010821; and

**WHEREAS**, the Town Board finds that sponsorship of the grant application, under the terms of the Agreement, serves the best interests of the Town by advancing public safety, supporting hazard mitigation planning, preserving tax base, and protecting critical transportation infrastructure;

**NOW, THEREFORE, BE IT RESOLVED**, by the Town Board of the Town of Windsor, Broome County, New York, as follows:

1. The Town Board hereby approves the Agreement with the White Birch Lake Property Owners Association, in substantially the form presented, and authorizes the Supervisor to execute the same on behalf of the Town.
2. The Supervisor, Town Attorney, and such other officers or employees as may be necessary are hereby authorized to take all steps reasonably necessary to carry out the intent of this Resolution, including executing any related certifications, forms, or documents required by NYSDEC for WQIP sponsorship.
3. This Resolution shall take effect immediately.

Adopted at a regular meeting of the Town Board of the Town of Windsor held on the 9<sup>th</sup> day of July, 2025.

**CERTIFICATION**

I, Elizabeth Pfister, do hereby certify that I am the Town Clerk of the Town of Windsor and that the foregoing constitutes a true, correct and complete copy of a resolution duly adopted by the Town Board of the Town of Windsor at a meeting thereof held at the Windsor Town Hall, 124 Main Street, Windsor, NY on the 9<sup>th</sup> day of July, 2025. Said Resolution was adopted by the following vote:

Supervisor Timothy Harting:	Voted-
Deputy Supervisor Eric Beavers:	Voted-
Council Member Gary M. Hupman:	Voted-
Council Member Mark Odell:	Voted-
Council Member Daniel Colwell:	Voted-

**Motion**  
**Resolution Adopted**

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Elizabeth Pfister, Town Clerk  
Windsor, New York

## **AGREEMENT**

This Agreement (“Agreement”) is made and entered into by and between the **TOWN OF WINDSOR**, a municipal corporation organized under the laws of the State of New York, with offices at 124 Main Street, Windsor, NY 13865 (hereinafter the “Town”), and **WHITE BIRCH LAKE PROPERTY OWNERS ASSOCIATION**, a New York not-for-profit corporation recognized as tax-exempt under Internal Revenue Code § 501(c)(7), with its principal mailing address c/o Gary Shedd, President, 150 White Birch Lake Road, Windsor, NY 13865 (hereinafter the “Association”), effective as of the date of the last signature affixed below.

### **RECITALS**

**WHEREAS**, the White Birch Lake Dam, a 21-foot earthen dam located in the Town of Windsor and owned by the Association, is classified by the New York State Department of Environmental Conservation (DEC) as an “Intermediate Hazard Dam” due to the potential downstream threat, including possible damage to New York State Route 79, in the event of dam failure; and

**WHEREAS**, the Association seeks to undertake necessary repairs to the dam to prevent potential failure and protect the public interest, but cannot apply directly for a New York State Water Quality Improvement Program (WQIP) grant due to its federal tax classification under IRC § 501(c)(7); and

**WHEREAS**, the Association has requested the Town to act solely as a public sponsor for the WQIP grant application, with the understanding that the project will be fully funded through non-Town sources and the Town will incur no cost, liability, or responsibility for the dam or its repair; and

**WHEREAS**, the Town has verified that the Association is duly incorporated in the State of New York and that its Certificate of Incorporation was filed with the Broome County Clerk on June 1, 2023, under Instrument No. 201000010821, with Joseph A. Mihalko, County Clerk, certifying the copy as a true and complete transcript of the original document of record; and

**WHEREAS**, the Town has determined that entering into this Agreement is in the best interests of its residents and taxpayers because:

- A. It mitigates a documented public safety hazard identified in the Town’s 2024 All-Hazards Mitigation Plan;
- B. It protects critical public infrastructure, including NYS Route 79;
- C. It supports the stability of a valuable residential tax base and preserves private investments within the White Birch Lake community;
- D. It advances the goals of the Town’s Flood Damage Prevention Law (Chapter 51) and Comprehensive Emergency Management Plan (2018);

- E. The Town's role is limited to sponsorship only and imposes no fiscal, legal, or operational burden upon the Town.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

## **ARTICLE I**

1.1 Under no circumstances shall the Town be required to expend any municipal funds or resources in connection with the grant application, project implementation, dam repairs, or related activities.

1.2 This Agreement shall not be construed as conferring upon the Town any ownership, operational control, maintenance duty, or regulatory responsibility for the White Birch Lake Dam.

1.3 The Town shall bear no legal, financial, or civil liability for damages, injuries, environmental claims, or grant-related compliance issues arising from or related to the dam, the repair project, or the use of grant funds.

## **ARTICLE II**

2.1 The Town agrees to act solely as the public sponsor for the Association's WQIP application and, if awarded, to serve as the formal grantee under NYS program guidelines.

2.2 The Town's responsibilities shall be strictly limited to:

- a. Submitting the completed grant application prepared by the Association;
- b. Executing the grant agreement with NYS DEC, if awarded;
- c. Administering the disbursement of grant and escrow funds in accordance with DEC-approved project budgets and schedules;
- d. Seeking reimbursement for any Town-incurred, grant-eligible administrative costs.

## **ARTICLE III**

3.1 The Association shall:

- a. Retain and fund a qualified grant writer or consultant to prepare all application materials and supporting documentation;
- b. Deposit in full the required local match or cost-share into escrow with the Town prior to execution of any grant agreement;
- c. Provide all technical specifications, documentation, contracts, and project oversight as required by DEC or the Town;

- d. Maintain full regulatory and legal responsibility for the dam's operation, inspection, and compliance with applicable law.

#### **ARTICLE IV**

4.1 The Association shall deposit the full amount of the required municipal match into a segregated, non-interest-bearing escrow account held by the Town.

4.2 Funds shall only be disbursed for eligible costs upon authorization by the Town and in accordance with grant guidelines and project milestones.

4.3 Any unused funds, in the event of denial, withdrawal, or early termination of the grant, shall be returned to the Association, less any unreimbursed Town-incurred costs.

4.4 The escrowed funds are intended to cover the full required local match; however, if any post-award repayment or financial liability is imposed on the Town beyond the escrowed amount, the Association shall remain responsible for such obligations in accordance with Section 6.2.

#### **ARTICLE V**

5.1 Indemnification. The Association shall fully indemnify, defend, and hold harmless the Town, its officers, employees, and agents from and against any and all claims, liabilities, demands, suits, damages, losses, penalties, fines, and expenses, including attorney's fees, arising from:

- a. The ownership, operation, or condition of the dam;
- b. The planning, design, execution, or failure of the dam repair project;
- c. Any violation of grant conditions or regulatory requirements;
- d. Any breach of this Agreement.

5.2 Insurance. The Association shall maintain commercial general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate, and shall provide proof of coverage naming the Town as an additional insured before any project activities commence.

5.3 Waiver and Release of Claims. The Association hereby knowingly and voluntarily waives, releases, and forever discharges the Town, its officers, employees, and agents from any and all claims, actions, causes of action, suits, damages, liabilities, demands, losses, costs, and expenses, whether known or unknown, whether in law or equity, arising out of or in any way related to the Town's role as public sponsor under this Agreement. The Association acknowledges and agrees that it shall have no right of action or recovery of any kind against the Town in connection with the grant application, grant administration, project funding, project execution, or dam condition. This waiver and release is intended to be broad and to bar all claims, including those sounding in contract, tort, statutory, or administrative law.

#### **ARTICLE VI**

6.1 The Town shall not incur any unreimbursed administrative expenses and shall bill the project for all eligible administrative services rendered.

6.2 If the State of New York or any other governmental authority requires repayment of grant funds due to noncompliance, ineligibility, disallowed costs, audit findings, or other post-award issues, the Association shall reimburse the Town in full for any amounts required to be repaid that are not covered by the escrowed municipal share, including any associated penalties, interest, legal fees, or administrative costs. This obligation includes any financial exposure incurred by the Town in reliance on the grant that exceeds or falls outside the scope of the escrowed funds.

## **ARTICLE VII**

7.1 This Agreement shall become effective upon execution and shall remain in effect through the conclusion of the grant period, including any audit or reporting requirements.

7.2 The Town may terminate this Agreement upon failure of the Association to fulfill any material obligation, including failure to escrow funds or maintain required insurance. In such case, the Town shall have no further obligation to act as sponsor or administer the project.

## **ARTICLE VIII**

8.1 Verification of Corporate Status. The Town has reviewed the Association's Certificate of Incorporation filed with the Broome County Clerk on June 1, 2023, under Instrument No. 201000010821, and confirms the Association is a duly formed New York not-for-profit corporation in good standing and eligible to contract.

8.2 Entire Agreement. This document constitutes the full understanding of the parties and may only be modified in a written instrument signed by both.

8.3 Governing Law. This Agreement shall be governed by the laws of the State of New York.

8.4 Severability. If any provision is held invalid, the remainder shall not be affected.

## **SIGNATURES**

### **TOWN OF WINDSOR**

By: \_\_\_\_\_

Name: Timothy Harting

Title: Town Supervisor

Date: \_\_\_\_\_

### **WHITE BIRCH LAKE PROPERTY OWNERS' ASSOCIATION**

By: \_\_\_\_\_

Name: Gary Shedd

Title: President

Date: \_\_\_\_\_

## **TOWN OF WINDSOR PLANNING BOARD**

124 Main Street Windsor, NY 13865

(607) 655-2023

June 30, 2025

RE: - White Birch Lake Dam

Dear Supervisor Harting and Town Board members:

At the June 25, 2025 Town of Windsor Planning Board meeting members of the White Birch Lake Association requested an opportunity to speak about the need to make repairs to the dam at White Birch Lake. The dam is a 21-foot earthen structure classified by the New York State Department of Environmental Conservation (NYS DEC) as an Intermediate Hazard Dam due to the potential downstream hazard in the event of a dam failure. According to the report presented to the Planning Board the classification is based on the potential impacts on New York State Route 79 in the event the dam was breached. According to the NYS DEC's dam safety list there are 17 dams in the Town of Windsor, only three (3) are classified as intermediate hazard structures.

The Town of Windsor has taken several proactive planning exercises to ensure safety based on various hazards that can impact the Town of Windsor and local residents. On May 5, 2010 the Town adopted Town Code Chapter 51 – Flood Damage Prevention Law which is compliant with the Federal Emergency Management Administration (FEMA) and NYS DEC standards for evaluating, ranking and determining flood risk. The Comprehensive Emergency Management Plan was updated in May of 2018 as a plan aimed at preventing or minimizing hazards to life and health while mitigating damage to property caused by a disaster. Both plans and associated local laws are supported by the All-Hazards Mitigation Plan (AHMP) jurisdictional annex for the Town of Windsor, most recently updated in 2024.

The AHMP is a requirement of FEMA to provide risk assessment and overall ranking of projects that are necessary to mitigate threats to life and property from both natural and manmade disasters. The jurisdictional annex for the Town of Windsor identifies Dam and Levee failures as a medium risk disaster and defines the Town's capability of responding to such as disaster as moderate. With three intermediate hazard dams in the Town, it is important to address safety and reduce potential risk to the greatest extent possible.

The White Birch Lake Association is seeking grant funding to address structural deficiency at the dam to prevent any potential failure. Given the nature of the state funded Water Quality Improvement Program (WQIP) Grant, their type of non-profit organization cannot be the applicant and are therefore seeking a public sponsor to assist with this project. With the

financial backing of the Association and the funds from the grant the project would be fully funded and the costs to the Town for administration of the grant would be reimbursed through the grant as well. Based on the presentation to the Planning Board the Association has engaged a grant writer to assist with developing the grant and these activities would not cost the Town anything to submit.

After consideration of the proposal and review of the Town's adopted plans and the Planning Board would ask that the Town Board consider sponsoring this grant on behalf of White Birch Lake residents. White Birch Lake is considered a great asset to the Town, providing a substantial residential tax base as well as bringing visitors to the Town for vacations and weekend stays. Along with neighboring Beaver Lake, there have been significant investments made in the properties and improvements to the lakes that create a welcome and peaceful place for lake residents to call Windsor home. The loss of either of these assets would be devastating to our growing tax base in the region.

The potential threat from the dam at White Birch Lake could have other impacts to the properties below the impoundment as well as damage to NYS Route 79, a major transportation corridor in our community. It is important to protect these assets from potential harm therefore providing significant justification for supporting this application for the lake.

By unanimous consent at our June 25, 2025 meeting the Planning Board voted to respectfully request the Town Board consider sponsoring the WQIP application on behalf of the White Birch Lake Association. It is our belief that by helping address the dam deficiencies we are further protecting life and property within our community and supporting an essential part of our local tax base.

If you have any questions or would like to further discuss this issue, please do not hesitate to contact me.

Thank you,



Shelly Johnson-Bennett  
Chairman