

STATE OF NORTH CAROLINA
CITY OF CHARLOTTE
COUNTY OF MECKLENBURG

**AMENDED AND RESTATED AGREEMENT FOR
OPERATION OF A SINGLE STORM WATER SYSTEM
IN MECKLENBURG COUNTY**

THIS AMENDED AND RESTATED AGREEMENT (hereinafter "Agreement") made as of 22nd day of June 2009, by and between MECKLENBURG COUNTY, a political subdivision of the State of North Carolina (hereinafter "County"), and the CITY OF CHARLOTTE, North Carolina, a municipal corporation of the State of North Carolina (hereinafter "City").

WITNESSETH:

WHEREAS, in 2002 the City and County executed an amended and restated "Agreement for Operation of a Single Storm Water System in Mecklenburg County", which Agreement the parties desire to amend and restate; and

WHEREAS, the purpose of this Agreement is to recognize that a single storm water system exists in Mecklenburg County, and that the goal of the City of Charlotte and Mecklenburg County is to provide comprehensive storm water services in an efficient, effective, and equitable manner; and

WHEREAS, the Charlotte City Council and Mecklenburg County Board of Commissioners believe the most equitable source of revenue for storm water services to be primarily storm water service fees assessed on the basis of contribution of runoff from each property; and

WHEREAS, North Carolina General Statutes 153A-277 and 160A-314 require that no storm water service fee may be levied whenever two or more units of local government operate separate structural and natural storm water and drainage system services in the same area within a County unless units of local government allocate among themselves the functions, duties, powers, and responsibilities of jointly operating a single system within the same area; and

WHEREAS, the County and City currently have certain distinct responsibilities in connection with the operation, maintenance and financing of separate systems; and

WHEREAS, the purpose of this Agreement is to continue the single storm water public enterprise created by the parties in 1993 in Mecklenburg County, to allocate storm water responsibilities, and to establish the method and responsibilities for financing and operating a single, comprehensive storm water quantity and quality management program in Mecklenburg County.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND FULFILLMENT OF THE TERMS OF THIS AGREEMENT, THE COUNTY AND CITY AGREE AS FOLLOWS:

1. Major system - The County shall be responsible for administering storm water management programs on the major system (defined as streams having a watershed greater than one square mile) and enforcement of the regulated floodway ordinance in the unincorporated areas of the County, and within the corporate limits of such municipalities as may be authorized by this Agreement with the County and/or any applicable ordinances. The County shall establish levels of service and cost, prioritize, schedule, and manage "storm water management programs", as such phrase is defined in G.S. 153A-274(7), related to the major system (including, but not limited to water quality, water quantity, the flow of storm water and the prevention of flood losses) and shall be responsible for financial accounting of associated revenues. The City of Charlotte hereby allocates responsibility for the major system within the corporate limits of the City to the County.
2. Minor system - The County shall be responsible for administering storm water management programs on the minor system (defined as streams and drainage systems with a watershed of less than one square mile) in the unincorporated areas of the County, and within the corporate limits of such municipalities as may be authorized by this Agreement with the County. The County shall establish levels of service and cost, prioritize, schedule, and manage "storm water management programs", as such phrase is defined in G.S. 153A-274(7), related to the minor system (including, but not limited to water quality, water quantity, the flow of storm water and the prevention of flood losses) in unincorporated areas, and shall be responsible for financial accounting of associated revenues. The City shall be responsible for the minor system and shall establish levels of service and cost, prioritize, schedule, and manage "storm water management programs", as such phrase is defined in G.S. 153A-274(7), relating to the minor system within the corporate limits of the City as they may change from time to time as the result of annexation or otherwise.
3. Charlotte-Mecklenburg Storm Water Services - The storm water services to be provided pursuant to this Agreement shall be conducted as a public enterprise to be known as the Charlotte-Mecklenburg Storm Water Services (CMSWS).
4. Water quality - The City and County are responsible for protecting and restoring the quality of storm water runoff and surface waters as required by the Clean Water Act and associated regulations promulgated by the United States Environmental Protection Agency, to the extent described in their respective National Pollutant Discharge Elimination System (NPDES) permit, and/or the State of North Carolina, and other laws and regulations that may apply.
5. Financing - Pursuant to N.C.G.S. 153A-278 and 160A-314, the County shall, unless otherwise provided by this Agreement, establish, revise, charge, and collect storm water fees and issue, where appropriate, storm water credits for property within the unincorporated areas of the County, and within the corporate limits of the City and such other municipalities as may be authorized by this Agreement with the County. Storm water fees shall be a periodic service charge, which shall consist of three components as follows:

- i) Fixed and Administrative Cost Component shall be used to pay those expenses that are not influenced by the amount of impervious area on a parcel of property, including but not limited to the cost of producing bills and collecting fees, determining impervious area, and operating customer service functions (hereinafter referred to as the "Billing Services"). Funds resulting from the Fixed and Administrative Cost Component of the fees shall be used only for Billing Services. Costs associated with this component shall be updated annually and incorporated into an annual budget according to the process detailed in the Charlotte-Mecklenburg Billing and Collections Cost Allocation Methodology Document ("Methodology Document") attached hereto as Exhibit A and incorporated herein by reference. The City and County Managers must agree on this annual budget prior to the beginning of the next fiscal year. If the City and County Managers cannot agree on a budget, the Mayor shall appoint two City Council Members and the Chairman of the Board of County Commissioners shall appoint two County Commissioners to meet together and work with the Managers on resolving the issue. The Managers shall approve any budget recommended by a majority of the members of this six-member group. In the event that the annual budget has not been agreed upon by the City and County Managers prior to the beginning of a fiscal year, the City and County shall proceed as if the prior year's budget is continued. By mutual consent of the City and County Managers, (a) the Methodology Document may be amended and, as amended, be substituted for the immediately prior version and attached hereto as Exhibit A, and (b) funds from the Major System Cost Component and the Minor System Cost Components may be used to pay a portion of the cost of the Billing Services.
- ii) Major System Cost Component shall be used to pay those expenses incurred in administering storm water management programs designed to protect water quality and manage structural and natural storm water and drainage systems of all types with a watershed greater than one square mile. The Major System Cost Component of the service charge for detached single-family residences shall have the number of tiers and associated amounts as determined by the County consistent with this Agreement and 153A-277. For all other property, the charge shall be based on a flat amount for each 2613 square feet of impervious area, and a prorata share for each portion thereof as determined by the County consistent with this Agreement and 153A-277. In accordance to this Agreement, revenues from the Major System Cost Component shall be distributed to the County for usage in the Mecklenburg County Storm Water Special Revenue Fund.
- iii) Minor System Cost Component shall be used to pay those expenses incurred in providing storm water management programs designed to protect water quality and manage structural and natural storm water and drainage systems of all types with a watershed of less than one square mile. The Minor System Cost Component of the service charge for detached single-family residences shall have the number of tiers and associated amounts as determined by the City or County consistent with this Agreement and with 160A-314 or 153A-277, as applicable. For all other property, the charge shall be based on a flat amount for each 2613 square feet of impervious area, and a prorata share for each portion thereof as

determined by the City or County consistent with the terms of this Agreement and with 160A-314 or 153A-277, as applicable. Revenues from the Minor System Cost Component collected within the corporate limits of the City shall be distributed to the City for providing minor system services within its corporate limits. Revenues from the Minor System Cost Component collected within the unincorporated areas of the County shall be distributed to the County for providing minor system services within the unincorporated areas of the County.

On or before April 15 of each year during the budget process, the City shall inform the County if it wishes to alter the Minor System Cost Component. If the City requests that the County alter the Minor System Cost Component levied within the corporate limits of the City, the Board of County Commissioners shall schedule and hold a public hearing on the proposed alteration in the service charge. The Division Manager of City Storm Water Services, or designee, shall attend the County's public hearing, make any necessary presentations, inform the public of the date for the City Council's public hearing on the proposed alteration, and answer questions. The County shall send the City Clerk the minutes of the public hearing for distribution to the Mayor and members of the City Council. In addition, the City Council shall schedule and hold its own public hearing on the proposed alteration in the service charge. Following the public hearings, the Board of County Commissioners shall alter the Minor System Cost Component of the service charge to be levied within the City after it receives notification from the City Council of the desired alteration in the Minor System Cost Component. The Board of County Commissioners and City Council shall attempt to schedule the public hearings before May 30 so that changes made in the Minor System Cost Component can be placed into the budget for the next fiscal year.

In the event a change is requested separate from the annual budget process, the County shall conduct such public hearings and other measures as required by the North Carolina General Statutes to establish new charges within sixty (60) days of the City's request.

6. Credits – Properties subject to storm water service charges may be granted credits against the fee in accordance to the credit policy jointly approved by the Charlotte City Council and Mecklenburg County Board of Commissioners. The credit shall be applied to charges for both the major and minor systems.

The City hereby retains the responsibility for reviewing and approving credit applications within the City for both the Major and Minor System Cost Components of the service charge.

7. Billing - Pursuant to NCGS 153A-277 and 160A-314 under this Agreement the County has primary responsibility for the Billing Services. However, until otherwise provided pursuant to this Agreement, the County agrees that the City shall perform the Billing Services throughout the unincorporated areas of the County as well as the City. In addition, the City will also perform the Billing Services for other client municipalities which contract with the County to operate and maintain storm water systems provided said provisions are agreed to in writing by City and County Managers.

In the event the County decides to perform the Billing Services itself, or the City chooses to discontinue performing the Billing Services for the County, that party shall give written notice three hundred sixty (360) days before said change to the other party's Manager. The change can only be effective at the beginning of a fiscal year (i.e., July 1). Within one hundred twenty (120) days of said change, the City shall submit a schedule showing the costs associated with the Billing Services that have been incurred and unrecovered by the City. These costs shall include operational costs in excess of the annual budget, not to exceed five percent (5%) of the annual budget; unpaid capital expenses, as described in Exhibit A; and system termination costs, as described in Exhibit A. Final settlement is required within sixty (60) days of the submission of costs.

8. Billing and Collection System Costs – The County shall pay the total costs for charges necessary to provide the Billing Services for the County and its other municipal participants. In the event the County or one of its municipal clients requests an individual change or changes to the Billing Services, the Methodology Document, as described in Exhibit A, will be used to develop a proposed budget and shall be agreed to by the City and County Managers. The County's final payment to the City for these costs will be addressed as part of the annual final settlement.

9. Distribution of Revenues – So long as the City is responsible for the Billing Services, before the distribution of storm water fees collected for the County or a municipality serviced by the Charlotte-Mecklenburg Storm Water Services, the City shall deduct the Fixed and Administrative Cost Component. The City shall also deduct the Minor System Cost Component collected to provide storm water services within the corporate limits of the City as described in Section "5.iii" of this Agreement. Net revenues shall be distributed to the County by the 25th of each month for usage in the Mecklenburg County Storm Water Special Revenue Fund.

Within one hundred twenty (120) days of the close of the fiscal year, the City shall submit a schedule showing the cost actually incurred for providing Billing Services as described in Section 5.iii, and the amount over and under the annual budget for such services. Final settlement is required within sixty (60) days of the submission of such information.

The County shall have no obligation to pay any amount for Billing Services which is more than five percent (5%) greater than the annual budget as described in Section "5.i" of this Agreement unless mutually agreed upon in writing by the City and County Managers. In the event actual costs incurred for Billing Services are less than the budget, the difference between the budgeted amount and the actual costs for providing the service will be remitted to the County within sixty (60) days of the submission of such information. Any Fixed and Administrative Cost Component revenues not spent in the year collected can be used only for Billing Services.

If there is a change in the Billing Services provider pursuant to the provisions of Paragraph 7, the County shall distribute the City's Minor System Cost Component revenues by the 25th of each month following the last billing cycle or on the first business day thereafter.

10. Indemnity of Each Party – County agrees to indemnify and hold City harmless from and against any and all claims, liabilities, damages and expenses, including attorneys fees, arising from the County's operation of its major system within the corporate limits of the City

and from the County's use of revenue raised from the major system cost component of the service charge. City agrees to indemnify and hold County harmless from and against any and all claims, liabilities, damages and expenses, including attorneys fees, arising from the City's operation and maintenance of the minor system in the City and from the City's use of revenues raised from the minor system cost component of the service charge.

11. Charlotte-Mecklenburg Storm Water Advisory Committee – A nine member citizens advisory committee shall be established with representatives of the following categories:

- schools, colleges, hospitals, or churches – 1 member (individual to be employed full time by the institution or be a board member or officer of the institution);
- industry, manufacturing, or commercial – 1 member (individual to be employed full time in the management and/or operation of industrial, manufacturing, or commercial property);
- environmental organizations – 1 member (individual to be a member of a generally recognized organization involved in environmental issues);
- financial, accounting, or legal professional – 1 member (individual to be employed full time in providing financial, accounting or legal services);
- developer or land development design professional – 1 member (individual to be employed full time in land development or the design of building or land improvements);
- general contractor – 1 member (individual to be employed full time as a construction contractor);
- residential neighborhoods – 3 members (individuals shall not qualify for one of the other categories).

The members shall be appointed as follows:

- 3 members by the Charlotte City Council;
- 3 members by the Mecklenburg Board of County Commissioners;
- 1 member by the towns in the northern part of Mecklenburg County as determined by the northern towns;
- 1 member by the towns in the southern part of Mecklenburg County as determined by the southern towns; and
- 1 member by the eight previously appointed members above.

The initial determination of specific categories to be appointed by the County and City will be determined by lottery after the two appointments are made by the towns in accordance with the above listing. The ninth member appointed by the Committee must represent the category not filled by the City, County or Town appointments. The members shall serve staggered, three year terms such that three members are appointed each year. Each member's term of service shall begin on a July 1 and end on a June 30 for the staggered three-year terms of service. If a member is not appointed by July 1, his or her term will nevertheless end on June 30 three years after the intended July 1 appointment. The categories of the three members to be appointed each successive year shall be allocated to the City, County, and towns or Committee by lottery. In the event a jurisdiction cannot identify a candidate for the category assigned by the lottery, a "residential neighborhood" representative may be appointed. The Committee position will revert back to the assigned category at the expiration of the term.

No member may be appointed to more than two full or partial terms. Any member who fails to attend at least seventy-five percent of the regular and special meetings of the Committee during any calendar year shall be automatically removed from the Committee. The Committee shall select a Chairperson each year from its own members by majority vote. Each member will continue to serve until 1) his or her term has expired and a successor has been appointed; 2) his or her resignation; or 3) his or her removal. If a vacancy on the Committee occurs resulting from resignation or removal, a person will be appointed to complete the unexpired term associated with such vacant position in the same manner as such position was originally filled. The successor must represent the same category.

A majority of the membership constitutes a quorum. Every action of the Committee requires the concurring votes of at least five members. The Committee may adopt its own rules of procedure which may not be inconsistent with the terms of this Agreement. The responsibilities of the Advisory Committee shall be as follows:

- Policy. Review and recommend to the City Council and Board of County Commissioners storm water management policies, policy changes, long-range plans, and their budgetary and rate impacts. The recommendations are to conform, in nature, to the successful operation of a single utility in Mecklenburg County and provide consistent guidelines and design principles for the community.
- Capital Improvements. Review and comment to the City Council and Board of County Commissioners on capital improvement programs. These capital improvement programs should be reviewed and evaluated on the basis of a comprehensive storm water quantity and quality management program in Mecklenburg County.
- Operations Program. Review and comment to the City Council and Board of County Commissioners on the annual operating budget for their respective service charge areas including but not limited to public education activities, customer service, and the billing and collections system.
- Storm Water Appeals. Hear appeals and reach decisions on: service charges, credits, and adjustments. Hear requests for changes from City and County staffs and from private parties, and make recommendations to the City Council and Board of County Commissioners on the following matters: the application, modification and enforcement

of storm water policies. These policies should be reviewed and evaluated on the basis of a comprehensive storm water quantity and quality management program in Mecklenburg County.

- SWIM Buffer Appeals and Variances. To the extent provided in the City Zoning Ordinance and/or the County Zoning Ordinance and/or the zoning or land use ordinance of any town located in Mecklenburg County, to hear and decide appeals and variance requests with respect to the SWIM buffer provisions of said ordinances.
- Floodplain Regulation Appeals and Variances. To the extent provided in the City Floodplain Regulations and/or the County Floodplain Regulations and/or the floodplain regulations of any town located in Mecklenburg County, to hear and decide appeals and requests for variances.
- Soil Erosion and Sedimentation Control Ordinance Appeals. Hear appeals as provided in the City and County Soil Erosion and Sedimentation Control Ordinances.
- Post Construction Controls Ordinance Appeals and Variances. To the extent provided in the City Post Construction Controls Ordinance and/or the County Post Construction Controls Ordinance and/or the post construction, zoning or land use ordinance of any town located in Mecklenburg County, to hear and decide appeals and variance requests with respect to post construction controls provisions of said ordinances.
- Councils, Commissions, and Staff Resource. Respond to City Council, Board of County Commissioners and staff requests for advice on matters related to the comprehensive storm water quantity and quality management program in Mecklenburg County.
- Reporting. Present the City Council and Board of County Commissioners with an annual report of key actions and issues.

For purposes of hearing these appeals and variances, to the extent necessary, the Advisory Committee shall be and function as a joint municipal county planning agency as specified in G.S. 160A-362, performing the functions of a board of adjustment as authorized by G.S. 160A-388. Overall administration and support of the Advisory Committee shall be provided by the County. City staff shall present all matters associated with the City's program directly to the Committee, including but not limited to reports, recommendations, budgets, and appeals.

12. Ownership of Real Property Involved in Undertaking. City shall have no ownership in any real property acquired by County for the operation of the major drainage system, and the County shall be free to dispose of such real property to the extent and under procedures allowed by State law. County shall have no ownership in any real property acquired by City for the operation of the minor drainage system, and the City shall be free to dispose of such real property to the extent and under procedures allowed by State law. However, the City and County shall cooperate with each other by granting access to property when necessary for operation of the major and minor drainage systems.

13. Methods of Amending this Agreement. This Agreement may be amended by

written agreement authorized by the governing bodies of each party and signed by authorized representatives of both parties.

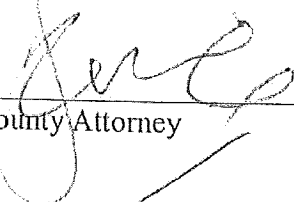
14. Term of Agreement – Methods of Terminating the Agreement. The initial term of this Agreement shall be from July 1, 2009 to June 30, 2010, and shall be automatically renewed each fiscal year thereafter unless notice of non-renewal is given in writing at least 18 months prior to the beginning of the fiscal year when termination is intended. This Agreement may also be terminated by court order upon the finding that there has been substantial breach of this agreement by the non-complaining party so as to entitle the complaining party to be relieved of its obligations under this Agreement.

15. Enforcement of Agreement. The parties agree that the remedy of specific performance would be an appropriate remedy, among others, for the enforcement of this Agreement. The parties agree that the effect of this Agreement is to consolidate the storm water management services such that the Joint Resolution for Joint Operation of a Single Storm Water System Within the City Limits adopted by the Board of County Commissioners and the City Council, dated November 9, 1992, shall cease to be in effect from and after January 1, 1994.

16. Entire Agreement. This Agreement is the entire agreement of the parties.

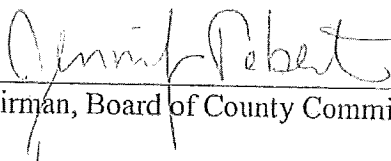
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written by the authority duly granted by their respective governing bodies.

Approved as to form:

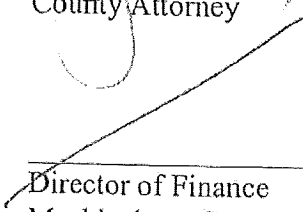


County Attorney

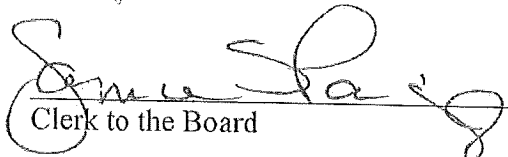
Mecklenburg County




Chairman, Board of County Commissioners



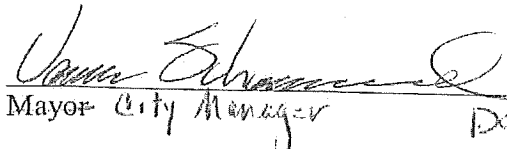
Director of Finance
Mecklenburg County



Clerk to the Board

NO PRE-AUDIT REQUIRED
BY: 
DIRECTOR OF FINANCE

City of Charlotte


Asst Mayor City Manager
Date: 8-28-09

Melvin J. Johnson
Deputy City Clerk