

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG
CITY OF CHARLOTTE**

**INTERLOCAL AGREEMENT FOR
THE LONG CREEK WATER QUALITY
ENHANCEMENT PROJECT**

This Interlocal Agreement for the Long Creek Water Quality Enhancement Project (the "Long Creek Agreement") is entered into and agreed upon as of _____, 2022, (the "Effective Date"), by and between the COUNTY OF MECKLENBURG (the "County"), a political subdivision of the State of North Carolina and the CITY OF CHARLOTTE (the "City"), a municipal corporation organized under the laws of the State of North Carolina (together, hereinafter the "Parties").

WITNESSETH:

WHEREAS, the Parties operate the Charlotte-Mecklenburg Storm Water Services utility pursuant to the Amended and Restated Agreement for Operation of a Single Storm Water System in Mecklenburg County (the "Agreement"), an interlocal agreement entered into between the Parties in 1993 and amended and most recently restated in 2017, which identifies their respective rights and responsibilities for operation and management of storm water throughout Mecklenburg County;

WHEREAS, the County owns properties, holds easements or will obtain easements, and will grant easements to the City in the floodplain of Long Creek, located between Treyburn Road and I-485 in Charlotte, North Carolina as shown in Exhibit "A" (hereinafter the "Property"). The County intends to make certain improvements to surface water quality on said Property along Long Creek, which includes the restoration of streams (hereinafter the "County Project");

WHEREAS, the City is interested in making certain improvements to surface water quality on said Property, which include the development of stream and wetland credits and provisions for subsequent maintenance and monitoring of the improvements (hereinafter the "City Project");

WHEREAS, it is in the Parties' mutual best interest to make the City Project and County Project improvements concurrently by developing and coordinating design plans, site improvements and construction activities for both the City Project and the County Project (hereinafter the "Combined Project");

WHEREAS, the Parties desire to enter into a funding and development agreement that sets out the respective rights and responsibilities with respect to the Combined Project;

NOW, THEREFORE, in consideration of the premises and the fulfillment of the terms of this Long Creek Agreement, the County and the City agree as follows:

1. Combined Project Description. The Combined Project includes a combination of the following: stream restoration, stream enhancement, stream stabilization, wetland restoration, habitat structure placement, and buffer enhancements.

2. Exhibit List. The following Exhibits are attached to this Long Creek Agreement and incorporated herein by reference:

Exhibit A: Map of the Property

Exhibit B: Combined Project Funding

Exhibit C: Combined Project Schedule

Each reference to the Long Creek Agreement shall be deemed to include all Exhibits.

3. Design. The County entered into a contract with Wildlands Engineering, Inc. (hereinafter the "Consultant") for design of the Combined Project. Through a separate workplan agreement, allowed under the aforementioned Agreement, the City is currently reimbursing the County for their portion of the design work. Designs have been coordinated to create one set of combined plans to be used for construction of the Combined Project.
4. Permits. The County shall, through their Consultant, obtain all Federal, State and local permits necessary to construct the Combined Project. The County will submit to the City a copy of all permit authorizations related to the Combined Project.
5. Construction Contract. The County solicited and obtained bids for the construction of the Combined Project, including all labor, materials and services necessary to execute the work associated with the approved design plans and construction documents, and awarded the contract for such Combined Project to a qualified contractor (hereinafter the "Contractor") in accordance with applicable law. The City will be responsible for supporting the County in their administration of the construction contract by managing aspects of the City Project such as coordination between the Consultant and Contractor, review and response to requests for information and submittals, attendance at construction meetings, pay application review and approval, project punch list, as-built and/or final walkthroughs and closeout for the purpose of construction QC/QA of the City Project, and all other tasks typically associated with a construction project.
6. Easements. At a minimum, the County agrees to grant storm drainage easements to the City to allow for the long-term stewardship and protection of the City Project. The storm drainage easements would allow for future trail and boardwalk crossings. The County understands that the City prefers dedicated conservation easements where possible and will work with the City to dedicate them where they can be reasonably supported by the County and its objectives.
7. Mitigation Credits. The City will accrue any mitigation credits for the minor system portion of the Combined Project that may be approved by the United States Army Corps of Engineers. The City Mitigation Bank Administrator will have oversight and coordination of the Site Specific Mitigation Plan (SSMP) submitted to and approved by the United States Army Corps of Engineers and North Carolina Division of Water Resources.
8. Payment Responsibilities of the City. The City agrees to pay to the County the amount as described in Exhibit B for the construction administration and construction of the City Project upon the following conditions being met: receipt by the City of an invoice from the County of costs associated with the City Project, complete with actual cost documentation supporting the invoice. The City's payment to the County shall be made within ninety (90) days of the above conditions being met. The County shall send the City separate progress invoices for the design and for the construction of the City Project.

9. Funding Administration. The County shall be responsible for contract administration for the construction contract, and the funding agreement with the City as specified in Exhibit B. The City and County, with assistance from the Consultant, will be responsible for separating all costs associated with the Combined Project in accordance with the approved bid form and contractors pay application. No payment will be made to the Contractor, by the County, for work that is deemed not acceptable to the City or their designated representative. The County agrees to develop a project plan that is approved by the City and will include (i) goals, (ii) identify stakeholders, (iii) outreach/communication, and (iv) risk management. The project plan will be jointly updated and managed by the County and City.
10. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given if (i) emailed, (ii) delivered personally or by courier, (iii) faxed with confirmation of receipt, or (iv) mailed in a sealed wrapper and deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, properly addressed as follows:

If to the County: Mecklenburg County
Storm Water Services
2145 Suttle Avenue Charlotte NC, 28208
Attention: Brian Sikes

If to the City: City of Charlotte
Storm Water Services
600 East Fourth Street Charlotte, NC 28202
Attention: Erin Shanaberger

Either party may change its notice address by giving written notice of the change to the other party in the manner specified above ten (10) days prior to the effective date of such change.

11. Applicable Law. This agreement shall be enforced, interpreted and construed by and under the laws of the State of North Carolina.
12. Dispute Resolution. The Parties agree that any disputes which cannot be resolved by the City and County Managers or their designees will first be attempted to be resolved by mediation and if not resolved by mediation, then by binding arbitration. If the Parties cannot agree upon selection of an arbitrator and a process for arbitration, disputes between the parties arising out of or in connection with this agreement or the performance or breach thereof shall be resolved by binding arbitration in accordance with the then-applicable Commercial Arbitration Rules (the "Rules") of the American Arbitration Association. The Rules will apply except as specified in this paragraph. All arbitration proceedings will be held in Charlotte, North Carolina before a single arbitrator. The parties hereto agree to submit to the enforcement of any award resulting therefrom by any court of competent jurisdiction. Judgment upon the award rendered in any such arbitration proceeding may be entered into any court having competent jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an order of enforcement as the case may be.

The City and County shall share responsibility in resolving any disputes with the Contractor associated with the City Project. If there is a contractual dispute between the County and Contractor related to the City Project, the City agrees to assist the County with resolving the dispute in a similar manner to how the City would respond if they owned the construction contract.

13. Term of Long Creek Agreement. The term of this agreement shall commence on the Effective Date and shall expire at the conclusion of the one-year construction warranty period unless sooner terminated or extended in accordance with the provisions of this agreement.
14. Schedule: City and County staff have reviewed and agreed upon the proposed Project Schedule attached hereto and incorporated herein as Exhibit C. All due diligence will be undertaken by both parties to ensure adherence to the Project Schedule.
15. Amendments. This agreement may be amended by written agreement authorized by the governing bodies of each party and signed by authorized representatives of both parties.
16. Termination. The Parties may terminate this agreement at any time by mutual consent under such terms as may be agreed to in writing by authorized representatives of both 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.

[Signatures are on following pages]

CITY OF CHARLOTTE

CITY MANAGER'S OFFICE

BY: _____
PRINT NAME: _____
TITLE: _____
DATE: _____

ATTEST:

City Clerk

This instrument has been pre-audited in the manner
Required by the Local Government Budget
and Fiscal Control Act.

By: _____
Director of Finance
City of Charlotte

MECKLENBURG COUNTY

BY: _____
Leslie Johnson, Deputy County Manager

ATTEST:

Clerk to the Board

APPROVED AS TO FORM

By: _____
County Attorney

Exhibit "A"
MAP OF THE PROPERTY

Exhibit "B"
COMBINED PROJECT FUNDING

Construction and Construction Administration

- Individual project components were divided into independent bid tabs prior to bid solicitations.
- County agrees to fund 100% of the construction of the County Project.
- City agrees to fund 100% of the construction of the City Project.

The not-to-exceed amount for construction of the City Project shall be \$2,000,000, which includes City Project contingency.

Exhibit "C"
PROJECT SCHEDULE

Task	Early Finish Date	Late Finish Date
Combined Project Construction	November 30, 2023	February 28, 2024
Combined Warranty Period	November 30, 2024	February 28, 2024