

## **INTERLOCAL AGREEMENT FOR THE LAKEWOOD WATER QUALITY IMPROVEMENT PROJECT**

This Interlocal Agreement for the Lakewood Water Quality Improvement Project (the “Agreement”) is entered into and agreed upon as of \_\_\_\_\_, (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 seek to develop a partnership to coordinate site improvements and construction activities for the City’s proposed water resource improvements and the County’s proposed greenway trail project.

**WHEREAS**, the City owns properties bordering Stewart Creek, located between Norwood Drive and Lakewood Avenue in Charlotte, North Carolina, which contains the City/County overlapping work area as shown in Exhibit A, attached hereto and incorporated herein (hereinafter the “Property”). The City intends to make certain improvements to surface water quality on said Property, which include the construction of a Stormwater Control Measure (hereinafter the “SCM”), as well as stream improvements, and provisions for subsequent maintenance and monitoring of the improvements (hereinafter the “City Project”);

**WHEREAS**, The County is currently interested in making certain improvements to the proposed Stewart Creek Lakewood Greenway as shown in the Greenway Master Plan on said Property (hereinafter the “Greenway Trail”) and provisions for subsequent maintenance and monitoring of the improvements (hereinafter the “County 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 Agreement, the County and the City agree as follows:

1. Combined Project Description. The Combined Project includes design and construction of the following: An SCM, and the Greenway Trail.
2. Exhibit List. The following Exhibits are attached to this Agreement and incorporated herein by reference:

**Exhibit A: Map of the Property.**

**Exhibit B: Combined Project Funding.**

**Exhibit C: Greenway Easement Agreement.**

**Exhibit D: Project Schedule.**

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

3. Easement Conveyance. In conjunction with execution of this Agreement, the City will convey an Access Easement and a Greenway Easement to the County per the Greenway Easement Agreement attached hereto and incorporated herein as Exhibit C.
4. Design. The City and County each entered into separate contracts with consultant Kimley-Horn and Associates, Inc. (hereinafter the “Consultant”) for design of the City Project and the County Project, respectively. Designs have been coordinated to create one set of combined plans to be used for construction of the Combined Project.
5. 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.
6. Construction Contract. The County shall solicit and obtain 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 award the contract for such Combined Project to a qualified contractor (hereinafter the “Contractor”) in accordance with applicable law. The City’s project manager, or designated representative, shall attend the bid opening and evaluate all bids received with County staff. The County will not award a contract for construction of the City Project in excess of the amount for construction of the City Project set forth in Exhibit B without express written authorization by the City. 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.
7. Maintenance. Maintenance of the Greenway Trail will be performed according to the terms of Exhibit C, the Greenway Easement Agreement, attached hereto and incorporated herein.
8. Payment Responsibilities of the City. The City agrees to make payment to the County for construction of the City Project portion of the Combined Project per the terms of Exhibit B and the following conditions: the County will encumber the total amount of the Combined Project (the total of the City’s and County’s projects) from County funds. The City’s total financial responsibility for the project will be remitted in three equal payments and one final payment over the course of the construction project which should not extend beyond 18 months total. The first invoice will be issued from the County to the City ninety (90) days after notice to proceed with construction is issued to the contractor. The second and third invoice will be issued one-hundred eighty (180) days and two hundred seventy (270) days, respectively, after the date of notice to proceed. The final invoice will coincide with project closeout and will be issued for the remainder of actual work completed for the City Project. The final invoice will be preceded by the City’s final acceptance of the City Project work including a review and approval by the City or its designated representative, and upon the County causing the contractor to correct any defects

associated with the City Project. Payment schedule may be suspended or modified in the event of a cessation or revision of work schedule by the Contractor. The payment schedule will be resumed when work by the Contractor resumes. The City's payment(s) to the County shall be made within thirty (30) days of receipt of invoice for work completed in accordance with all applicable standards set forth in contract documents, plans, and specifications. Should a contract change order requiring additional funding to complete the City Project be deemed necessary by the City, the City shall provide written authorization for the County to approve such change order request and the City shall provide the additional funding to the County prior to execution of the change order on behalf of the City.

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.

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  
                                 Asset and Facility Management  
                                 3205 Freedom Drive, Suite 6000  
                                 Charlotte NC, 28208  
                                 Attention: Brian Bennett, PLA, ASLA

If to the City:            City of Charlotte  
                                 Storm Water Services  
                                 600 East Fourth Street  
                                 Charlotte, NC 28202  
                                 Attention: Brian Wilson, PE

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.

13. Term of 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 D. 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**

By: \_\_\_\_\_  
Marcus Jones, City Manager

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, Assistant County Manager

Attest:

\_\_\_\_\_  
Clerk to the Board

APPROVED AS TO FORM

\_\_\_\_\_  
County Attorney

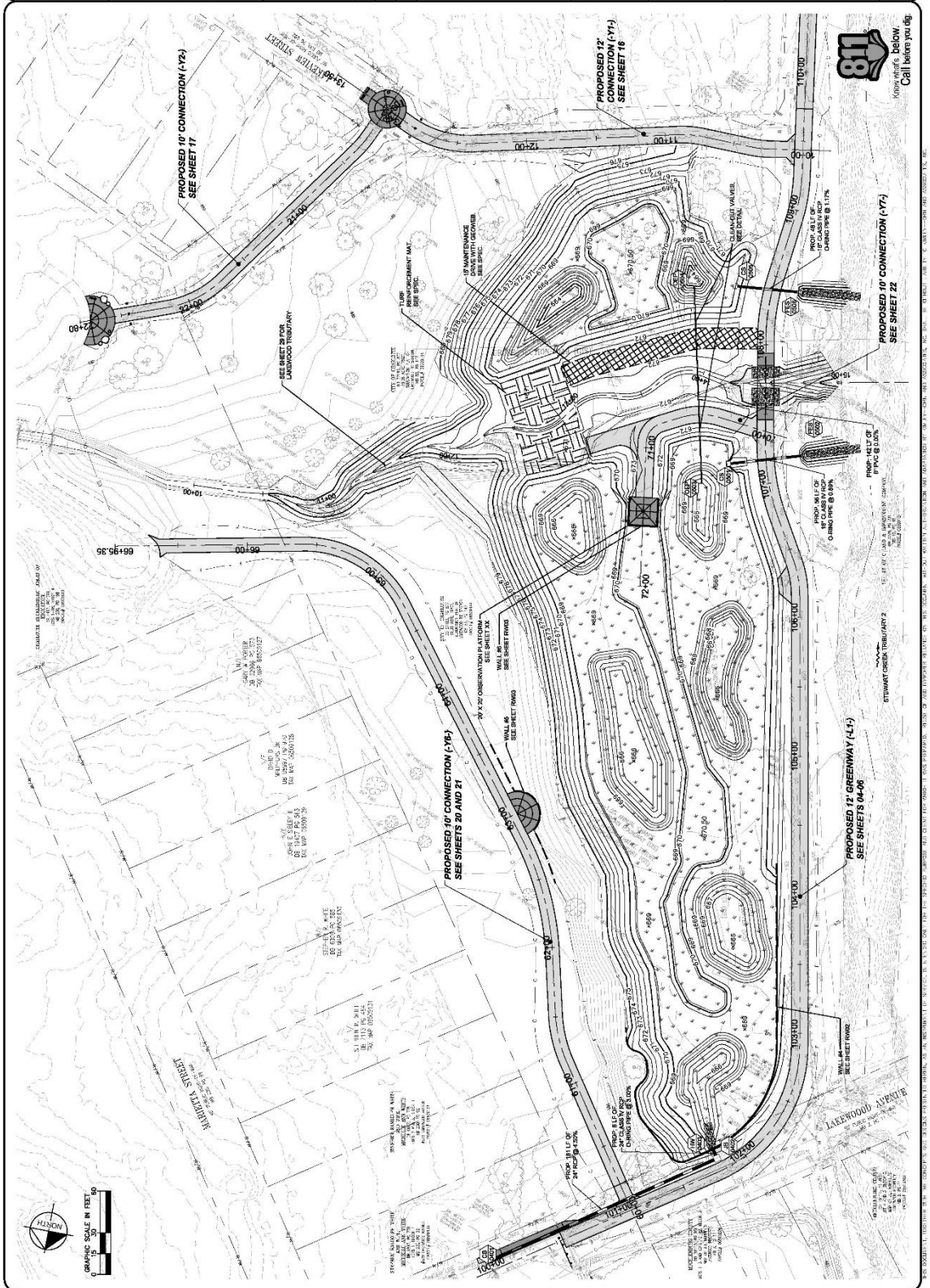
# **Exhibit “A”**

## **MAP OF THE PROPERTY**

SHEET 30	STEWART CREEK GREENWAY LAKEWOOD AVE TO YELLOWSTONE DR	DATE 10/20/2016	BY JL	AS NOTED
	LAKEWOOD REGIONAL	DATE 10/20/2016	BY JL	NOT FOR CONSTRUCTION

NO.	DATE	DESCRIPTION

Kimley-Horn  
2000 South Tryon Street, Suite 200  
Charlotte, NC 28202  
© 2016  
Plans Prepared By:





# **Exhibit “B”**

## **COMBINED PROJECT FUNDING**

### Construction and Construction Administration

- Individual project components will be 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 including reimbursement to the County for the agreed upon shared construction costs of providing heavy duty pavement.

The not-to-exceed amount for construction of the City Project shall be \$2,500,000.00, which includes City Project contingency.

# **Exhibit “C”**

## **GREENWAY EASEMENT AGREEMENT**

Drawn by and pick up: David C. Dwyer, Esq.  
Ruff, Bond, Cobb, Wade & Bethune LLP  
Register of Deeds Box 24  
Brief Index: Greenway Easement  
Tax Parcel Number: Portion of 07113148  
Revenue Stamps: Exempt / No Consideration

STATE OF NORTH CAROLINA

GREENWAY EASEMENT AGREEMENT

COUNTY OF MECKLENBURG

THIS EASEMENT AGREEMENT (this “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between **CITY OF CHARLOTTE**, a North Carolina municipal corporation (“Grantor”), and **MECKLENBURG COUNTY**, a political subdivision of the state of North Carolina (“Grantee”).

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property located in Mecklenburg County, North Carolina, which property is identified by tax parcel 065-091-44, recorded in Map Book 27183 at Page 877 (the “Property”), and is further shown on the map attached hereto as Exhibit A;

WHEREAS, Grantee is developing a county-wide plan for greenway, recreational, park and land preservation purposes along the various creeks, floodplains, and other areas in Mecklenburg County, including on the Property, within the specific area shown and labeled “Easement Area” on Exhibit A, attached hereto; and

WHEREAS, Grantor desires to grant to Grantee a perpetual non-exclusive greenway easement (the “Easement”) for the uses set forth herein;

NOW, THEREFORE, for and in consideration of the premises and the sum of One Dollar (\$1.00) to it in hand paid, the receipt of which is hereby acknowledged, Grantor hereby gives and grants unto Grantee a perpetual non-exclusive right and easement over the Easement for public active or passive green space, or greenway, purposes, Grantee shall also have the right to maintain and make improvements to the bank and bed of Stewart Creek, provided that Grantee has first advised Grantor of plans for such work, and that Grantor has reviewed and approved such plans. For purposes of this Agreement, a greenway may include greenways, urban trails, bike lanes, sidewalks, and other public trail facilities, including (but not limited to) signage, lighting, vegetation and other infrastructure. Grantee shall have the right to grant

easements or rights-of-way across the Easement for underground utilities or roadways incident to the use of the Easement solely for the primary purposes set forth above, after receiving Grantor's prior approval of the plans for any such grant. Grantee shall have the sole right to promulgate rules and regulations for the reasonable use of the Easement by the public, provided the Easement is used for the purposes stated herein. If reasonable access to the Easement is otherwise unavailable, Grantor further grants unto Grantee reasonable access from time to time to the Easement over any remaining contiguous property owned by Grantor for the purpose of developing and maintaining the Easement (but not for public access) for the purposes set forth herein; provided, Grantee shall (a) to the extent possible, utilize existing roads for such purposes, (b) repair any damage resulting from such access, and (c) upon request of Grantor, execute a supplemental instrument delineating an appropriate access route to provide the agreed access.

GRANTOR AND GRANTEE, for themselves and their heirs, successors and assigns, further agree as follows:

1. Grantee shall be responsible, at its expense, for maintaining the Easement in a safe and clean condition in compliance with all applicable laws and in accordance with the purposes set forth herein, including construction and maintenance of a greenway trail, removal of trash, waste, litter, and cutting of grass within the Easement.

2. Grantor shall erect no permanent structure of any kind over or across the Easement, nor shall Grantor remove, replace, or alter the facilities, infrastructure, lighting, and vegetation within the Easement without the prior written approval of Grantee. For purposes of this document, "permanent structure" includes (but is not limited to) buildings, tennis courts, and swimming pools. Grantor shall not take any action that would impede access to the Easement, except when it is necessary to do so temporarily for Grantor to maintain from time to time its storm water, sewer and/or water infrastructure located on the Property, or to respond to an emergency situation. Grantor shall give Grantee at least two weeks' prior written notice in non-emergency situations of this type, and as much prior notice as is possible, if any, in emergency situations

3. Grantor, for itself and its successors and assigns, reserves the right to grant easements or rights-of-way for utilities within the Easement, provided (i) Grantor provides Grantee no less than thirty (30) days' written notice prior to commencement by Grantor (or its contractors or subcontractors) of any new construction in the Easement Area, and (ii) such easements do not unreasonably interfere with the use of the Easement resulting from the implementation of such utilities. To the extent Grantor's grant of easements or rights-of-way for utilities within the Easement damages the greenway and/or the associated greenway facilities, Grantor shall promptly repair the greenway and/or associated greenway facilities to the specifications of Mecklenburg County Park and Recreation.

4. Grantee will, to the extent allowed by law, indemnify, protect and hold harmless Grantor and its successors and assigns from and against any and all loss, cost, damage and expense arising from, out of or in connection with any actions taken by Grantee (or its employees) in the performance of the work described herein, including without limitation, claims by third parties, personal injury, death, or damage to property.

5. Grantor covenants with Grantee that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for restrictions, easements, rights-of-way and other matters of record.

TO HAVE AND TO HOLD the aforesaid rights, privileges, and easement unto Grantee, its successors and assigns, for so long as said property is utilized by Grantee, its successors and assigns, for the purposes set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

GRANTOR:

CITY OF CHARLOTTE,  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that \_\_ is \_\_\_\_\_ of the City of Charlotte, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing instrument was signed in its name.

WITNESS my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2019.

*[Stamp/Seal]*

\_\_\_\_\_  
Notary Public - \_\_\_\_\_  
(Type Name)

My Commission Expires: \_\_\_\_\_

GRANTEE:

**MECKLENBURG COUNTY,**  
a political subdivision of the State of North Carolina

By: \_\_\_\_\_  
Name: Dena R. Diorio  
Title: County Manager

Approved as to Form:

\_\_\_\_\_  
David C. Dwyer, Esq.  
Ruff, Bond, Cobb, Wade & Bethune LLP  
Counsel for Mecklenburg County

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

This \_\_\_\_ day of \_\_\_\_\_, 2019, personally came before me Dena R. Diorio, who, being first duly sworn, says that she is the County Manager of Mecklenburg County, and that said writing was signed by her on behalf of Mecklenburg County by its authority duly given; and the said Dena R. Diorio acknowledged the said writing to be the act and deed of Mecklenburg County.

*[Stamp/Seal]*

\_\_\_\_\_  
Notary Public - \_\_\_\_\_  
(Type Name)

My Commission Expires: \_\_\_\_\_

Exhibit A

Parcel ID: 065-091-44

# **Exhibit “D”**

## **PROJECT SCHEDULE**

Task	Early Finish Date	Late Finish Date
Real Estate and Work Plan Phase	3/05/2020	4/08/2020
Real Estate Acquisition	3/05/2020	4/08/2020
Design and Permitting	2/28/2020	3/31/2020
Bid Phase (3 month bid phase)	6/15/2020	7/20/2020
Construction Phase (12 month Construction Phase for Stream, Greenway and SCM)	8/17/2021	9/21/2021