

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

**AMENDED AND RESTATED
INTERLOCAL AGREEMENT FOR
UMBRELLA MITIGATION BANK**

This Amended and Restated Interlocal Agreement for the Umbrella Mitigation Bank (“Amended and Restated Agreement”) is made and entered into this ____ day of November, 2013, (the “Effective Date”), by and between the **CITY OF CHARLOTTE**, a municipal corporation organized under the laws of the State of North Carolina (hereinafter the “City”), and **MECKLENBURG COUNTY**, a political subdivision of the State of North Carolina (hereinafter the “County”).

WITNESSETH

WHEREAS, the City and the County operate the Charlotte-Mecklenburg Storm Water Services utility pursuant to an interlocal agreement entered into between these parties in 1993, which identifies their respective rights and responsibilities for operation and management of storm water throughout Mecklenburg County; and

WHEREAS, the City and County entered into the Interlocal Agreement for the Umbrella Mitigation Bank (“Agreement”) in June, 2008, to ensure that County stream and wetland restoration projects submitted to the Umbrella Mitigation Bank qualify for said credits in that they are planned, designed and constructed in a way that takes advantage of partnership opportunities between the two parties, provides cost effective solutions to water quality impairment, maximizes mitigation opportunities, provides preservation of the restoration corridor in perpetuity and provides maintenance as necessary in perpetuity; and

WHEREAS, the City and the County desire to amend the Agreement through the Amended and Restated Agreement to make technical corrections, comply with updated Federal mitigation rules, and make other procedural clarifications including specifying a credit sales methodology; and

WHEREAS, the City operates and maintains an Umbrella Stream and Wetland Mitigation Bank (“Umbrella Mitigation Bank”), which provides credits to entities in order for them to mitigate unavoidable stream and wetland impacts that are separately authorized by Section 404 of the Clean Water Act (“CWA”) and Section 10 of the Rivers and Harbors Act; and

WHEREAS, the use of said credits must done in compliance with the CWA and its implementing regulations, including, but not limited to, the 404(b)(1) guidelines and the National Environmental Policy Act; and

WHEREAS, the City sells said credits to City and/or County entities that undertake authorized stream and wetland impacts, at a rate equal to the current rate charged by the North Carolina administered Ecosystem Enhancement Program or another rate approved by the Interagency Review Team (“IRT”); and

WHEREAS, the County performs stream and wetland restoration projects throughout Mecklenburg County and would like to continue selling to the Umbrella Mitigation Bank credits generated through said projects as a way to partially fund the County’s stream and wetland restoration projects; and

WHEREAS, the U.S. Army Corps of Engineers (“USACE”) has determined that it is acceptable for the County to construct and maintain stream and wetland restoration projects that could qualify for credits under the Umbrella Mitigation Bank; and

WHEREAS, the City and the County have reached an agreement on their respective rights and responsibilities with respect to the sale and purchase of said credits and desire to reduce the terms of their agreement to writing in this Amended and Restated Agreement.

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

1. Nature of Umbrella Mitigation Bank Stream and Wetland Restoration Projects. The goal of the Umbrella Mitigation Bank is to restore, enhance, create and preserve stream and/or non-tidal stream and wetland systems and their functions and values to compensate, in appropriate circumstances, for unavoidable stream and wetland impacts deemed appropriate by the IRT. The USACE, after consultation with the appropriate Federal and State review agencies (*i.e.*, IRT), shall make final decisions concerning the amount and type of compensatory mitigation to be required for permitted wetland and/or stream impacts, and whether or not the use of credits from the Umbrella Mitigation Bank is appropriate to offset those impacts. The parties to this agreement understand and agree that, where practicable, on-site, in-kind compensatory mitigation is preferred, unless use of the Umbrella Mitigation Bank is determined by the USACE to be preferable.

2. City Responsibilities.

a. Ultimate Authority. As the sponsor of the Umbrella Mitigation Bank, the City is ultimately responsible for all aspects of the stream and wetland restoration projects processed through the Umbrella Mitigation Bank.

b. City Mitigation Administrator (“MA”). The City shall be a major stakeholder during the County’s restoration project selection and in all phases of the County’s restoration project planning, design, construction and post-construction monitoring and maintenance activities. To that end, the City shall appoint a MA for each proposed County restoration project submission to the Umbrella Mitigation Bank, who will be responsible for overseeing the Umbrella Mitigation Bank process for each proposed County restoration project.

c. MA Review, Inspection and Approval. The MA shall have the right to review and comment on the proposed plans for a County restoration project to be submitted to the Umbrella Mitigation Bank. The MA shall also have the right to inspect the assigned County restoration project at any point during its construction/implementation to ensure that said project will qualify for Umbrella Mitigation Bank credits. Approval by the MA does not necessarily ensure that mitigation credits will be generated.

d. Communications. The MA shall be the primary point of contact for all County restoration projects processed through the Umbrella Mitigation Bank. Specifically, the MA shall be involved in all discussions and negotiations with the IRT concerning possible County restoration project submissions to the Umbrella Mitigation Bank, and the MA shall review all County documents related to said projects prior to submission to the IRT. All written communications to the IRT concerning a proposed County submission to the Umbrella Mitigation Bank shall be signed by the MA and submitted on Charlotte-Mecklenburg Storm Water Services letterhead. All emails related to said restoration projects shall be sent by the MA to the IRT and copied to the appropriate County project manager.

3. County Responsibilities.

a. County Restoration Project Manager (“PM”). The County shall appoint a PM for each proposed County restoration project submission to the Umbrella Mitigation Bank. The PM will coordinate with the MA on the County’s restoration project selection and in all phases of the County’s restoration project planning, design, construction and post-construction monitoring and maintenance activities.

b. Preparation and Submission of Mitigation Documents. All proposed County restoration projects must be approved by the IRT. A Site Specific Mitigation Plan (“SSMP”) must be prepared for each proposed restoration project. The PM shall oversee the development of the SSMP, which shall include a discussion of the goals and objectives of the site, site selection information, site protection instrument, baseline information, determination of credits, mitigation work plan, maintenance plan, performance standards, monitoring requirements, long-term maintenance plan, adaptive management plan, financial assurances and other relevant information as outlined in the Federal Mitigation Rule. The County shall produce the SSMP at the County’s sole expense and the MA shall submit the SSMP to the IRT. Upon approval of the SSMP, the MA shall prepare for the County’s approval, a scope of work and associated fees related to the City’s administrative duties and costs over the life of the project.

c. Monitoring. Pre-construction and post-construction monitoring, including monitoring schedule, shall be in accordance with the City’s Mitigation Monitoring Guidelines and/or the most recent guidance from the USACE Wilmington District. Following each monitoring event, a mitigation monitoring report must be produced and submitted to the IRT before credits can be approved and released. The County shall provide project monitoring and produce the monitoring report at the County’s sole expense and the MA shall coordinate with the IRT regarding credit releases based on the monitoring results.

d. Easements. All restoration projects proposed by the County for deposits into the Umbrella Mitigation Bank must protect all bank lands associated with the restoration project through the most recent version of the City’s Permanent Conservation Easement approved by the USACE. The County must grant all easements or transfer acquired easements to the City before any credits can be released from the project.

e. Maintenance. The County shall be responsible for short-term and long-term maintenance of all Umbrella Mitigation Bank restoration projects that generate credit for the County. All maintenance performed by the County on Umbrella Mitigation Bank projects shall be in accordance with project goals and design criteria and must be

approved by the MA. The County, in consultation with the MA, shall acquire any permits necessary to complete maintenance activities. The MA shall coordinate with the IRT in the event that a major disturbance to the restoration project will be caused by maintenance activities.

4. Sale and Purchase of Credits.

a. The Umbrella Mitigation Bank may sell mitigation credits to the County as credit availability allows. The Umbrella Mitigation Bank shall sell credits at the current rate being charged by the Ecosystem Enhancement Program (“EEP”) or another rate approved by the IRT. Payment from the County to the Umbrella Mitigation Bank will occur prior to the start of construction of the project requiring credits.

b. The Umbrella Mitigation Bank may purchase mitigation credits generated by the County’s restoration projects as funding allows. The Umbrella Mitigation Bank shall purchase credits at the current rate being charged by the EEP or another rate approved by the IRT minus the City’s previously approved administrative costs incurred over the course of each restoration project. Payment from the Umbrella Mitigation Bank to the County will occur when credits from a County restoration project have been sold. County credits can only be sold in watersheds where credits have been released from County projects. When credits are sold in each 8-digit Hydrologic Unit, 50% of the credits will come from a County project and 50% will come from a City project. If there are not enough credits in a County project to make up 50% of sales, then additional credits from a City project shall be sold to equal 100%. If there are not enough credits in a City project to make up 50% of sales, then additional credits from a County project shall be sold to equal 100%. An expenditure estimate utilizing the current EEP credit rate, or another rate approved by the IRT, for mitigation credit purchases will be made and added in the budget ordinance.

5. Applicable Law. This agreement shall be enforced, interpreted and construed by and under the laws of the State of North Carolina.

6. Term of Agreement. The Term of this agreement shall commence on the Effective Date, and the City and County shall review this agreement at least every five years and make such revisions as are mutually agreed upon, including, but not limited to, termination of the agreement.

7. Amendments. Any amendments to this agreement must be in writing and approved by the City Manager and County Manager.

8. Termination. The City and County may terminate this agreement at any time by mutual consent under such terms as may be agreed to in writing by the City Manager and County Manager.

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.

CITY OF CHARLOTTE

MECKLENBURG COUNTY

By: _____
Ron Carlee, City Manager

By: _____
Leslie Johnson, Interim Assistant County
Manager

ATTEST:

ATTEST:

City Clerk

Clerk to the Board